Introduction: Regulating Decent Work for Domestic Workers

Adelle Blackett, Guest Editor

Care work[1] in the household plays a market-enabling function. The market nexus may have become obscured because of the ease with which care *giving* (or care

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1. While the language of "care work" is often applied to nursing work performed outside of the home and responsibilities deemed similar within the household, and the language of domestic work reserved by some for responsibilities such as housecleaning, I deliberately use the language of "care work" and "domestic work" interchangeably. I am concerned not to replicate the racial and class hierarchy overladen in the distinction ably identified by Dorothy Roberts between the "menial" work assigned to domestic workers and the "spiritual" work reserved for the "mother" or mother-like figure. I wish also to put distance between the assumptions about the relative skill that surround the distinction. See Dorothy E. Roberts, "Spiritual and Menial Housework" (1997) 9 Yale Journal of Law and Feminism 51 at 51 (arguing that the "the distinction between menial and spiritual housework reflects and supports a racial division of domestic labor"); see also Pat Armstrong, Hugh Armstrong, and Krista Scott-Dixon, *Critical to Care: The Invisible Women in Health Services* (Toronto: University of Toronto Press, 2008) (offering a crucial study that brings a range of "invisible and undervalued" occupations including housekeepers, laundry, and food services workers in hospitals into the discussion of care and, in the process, providing

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taking, as Martha Fineman prefers) is constructed as unpaid, within the nuclear family.[2] Care was returned to the public sphere, progressively and selectively, through a welfare-statist rationale. In the states in which a welfare state developed,[3] entitlements tended to be constructed around the male breadwinner model but were linked to, and broadened to include, social citizenship entitlements.[4]

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a robust challenge to the construction of the notion of "ancillary work"); and Nicola Yeates, *Globalizing Care Economies and Migrant Workers: Explorations in Global Care Chains* (New York: Palgrave MacMillon, 2009) at 5 (in a discussion focusing on nursing care in institutional settings, but which identifies "care labour" as "one form of social reproductive labour"—that is, "an essential component of wider societal processes through which social relations are maintained and which creates and sustains people as physical, social and cultural beings" and which considers that social reproduction "also encompasses elements of social transformation as these social structures, institutions and relations are reconfigured in new contexts"). A range of problems with the language of "domestic" work are addressed in a table in the ILO, *Decent Work for Domestic Workers*, Report no. IV(1) at the International Labour Conference, 99th Session, 2010 (Geneva: ILO, 2009), although some of the initial language was reworded. It is reproduced in the annex to this introduction. The question of identifying an appropriate Spanish terminology was raised during the first session of the International Labour Conference in June 2010. A final decision remains to be taken in June 2011.

2. See Martha Albertson Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth-Century Tragedies* (London: Routledge, 1995). See also Michael McKeon, *The Secret History of Domesticity: Public, Private, and the Division of Knowledge* (Baltimore: Johns Hopkins University Press, 2005) at 180-1 (offering an historical perspective on the construction of an "ossified gendered separation between use and exchange, consumption and production, private necessity and public freedom" through "the separation of work from housework" based largely on its unwaged character—but acknowledging domestic service through which the household remained "a site of remunerated labor" but became gendered."). The history needs also to consider the vestiges of paid domestic work, the slave relationship. For Joanne Pope Melish, writing on the New England economy, domestic work was of economic significance during slavery, where virtually all of the household labour was performed by slaves. The value could be understood both "per se but also … [because] it released white males to engage in new professional, artisan, and entrepreneurial activities, thus increasing productivity and easing the transition from a household-based to a market-based economy." Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and 'Race' in New England, 1780–1860* (Ithaca: Cornell University Press, 1998) at 8 (adding that this suggestion contributes to the "debate between social historians and market historians over the timing and nature of the transition of the New England economy to capitalism" (at 8; see also at 17–18 and 23). For crucial recent scholarship retracing the genealogy of the "economic family," see Janet Halley and Kerry Rittich, "Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism" (2010) 58 (Supplement) American Journal of Comparative Law 753 (concluding at 775 that "[i]t cannot be an accident that the family emerged from the household during the long nineteenth century seemingly everywhere—but the bewildering variety of ways in which it did so still daunts us. Whether this shift took place through acts of colonial-legal violence, in moments of nation-making, or merely by being ignored in the hustle to make global commerce governable and profitable—it just kept happening").
3. For an important discussion of the challenged development of welfare state policies in developing countries, and gendered implications, see generally Ruth Pearson, Shahra Razavi, and Caroline Denlay, eds., *Globalization, Export-Oriented Employment and Social Policy: Gendered Connections* (Basingstoke: Palgrave Macmillan, 2004). For current debates on social protection, see Peter Townsend, ed., *Building Decent Societies: Rethinking the Role of Social Security in Development* (Basingstoke: Palgrave Macmillan and ILO, 2009).
4. See Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford: Oxford University Press, 2001); See also Sarah van Walsum, "Regulating Migrant

As Catharina Calleman notes in her contribution to this special issue, although some profoundly social democratic states such as Sweden assumed that the demand for domestic work would decrease as workplace equity and broader equality between men and women would increase, there has instead been a resurgent demand for paid domestic work.[5] Paid domestic work in the household has become increasingly important for all of the demographic reasons linked to dual income families in an economic structure whose viability may seem irretrievably linked to consumption. The insatiable "need" in the current stage of globalization for workers who are perpetually market available and relentlessly productive is coupled with significant demographic changes leading in many parts of the world to increased longevity. It is important to recognize that the rising demand for domestic work also reflects recognition of the increased value attached by communities such as the disabled, as well as the elderly, to the dignity of being able to have care support and stay at home and retain greater autonomy than in public health care facilities.[6]

The observed contemporary rise in the demand for privatized care work cannot be separated from the state retreat from the provision of certain services and an observed increase in the tendency towards the privatization of care through a cost reduction logic and a weakened commitment or capacity to pay for social protection via employer taxation and contributions in an environment where employers are perceived also to be footloose investors who may relocate.[7] And the persistence of the need for contracted care in many developing countries reflects, in part, the fact that most have never had the privilege to develop robust social security systems.[8]

So, instead, it is typically racialized, "othered" women—often highly educated as qualified nurses or teachers—who relocate through a process of "care resource

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Domestic Work in the Netherlands: Opportunities and Pitfalls" [in this volume] (noting also the persisting ideal of the male breadwinner, female housewife model, as reflected in the Netherlands having the highest percentage of women in part-time work in the European Union. Dutch fiscal law built on the rationalization that the women were not the main breadwinners, and employers were not required to pay social premiums, pension benefits, or even deduct income tax for domestic workers working fewer than four days per week).

5. See Catharina Calleman, "Domestic Service in a 'Land of Equality': The Case of Sweden" [in this volume].
6. See Linda Delp and Katie Quan, "Homecare Worker Organizing in California: An Analysis of a Successful Strategy" (2002) 27(1) Labor Studies Journal 1 (in which the state remained the employing agency, responsible for paying for the care).
7. The privatization of care reflects an important contemporary complement to the increased demand for domestic work. See notably Gabrielle Meagher and Marta Szebehely, *Private Financing of Elder Care in Sweden: Arguments for and against*, Institute for Futures Studies Working Paper 2010:1 (Stockholm: Institute for Future Studies, 2010) at 23-5 (exploring an underlying "vertical" assumption that both quality and quantity of services is likely to increase if financing eldercare is private, coupled with a "horizontal" assumption that the supply of public funds must contract, and identifying instead the risk of both increased cost and greater informalization of elder care).
8. See Pearson, Razavi and Denlay, *supra* note 3; John Gerard Ruggie, "Taking Embedded Liberalism Global: the Corporate Connection," in David Held and Mathias Koenig-Archibugi, eds., *Taming Globalization: Frontiers of Governance* (Cambridge: Polity Press, 2003) 93.

extraction."[9] They provide undervalued, subsidized, care in private households from rural to urban areas in the same country, from lower income to higher income countries in the same region, or in other economically emerging regions of the global South, or increasingly from South to North.[10] They leave their own families behind, sending remittances in their place.[11] Increasingly, it is this broader, multi-pronged dynamic that is referred to as "global care chains."[12] These women face the multiple structural disadvantages associated with travelling from the South to the North, under restrictive immigration controls and segmented into precarious forms of employment on which they are dependent not only for their own livelihood

9. See Rhacel Salazar Parreñas, *Children of Global Migration: Transnational Families and Gendered Woes* (Stanford: Stanford University Press, 2005) at 14 (capturing a macro-process entailing "first … the exhaustion of state care resources by structural adjustment policies that mandate the servicing of the foreign debt and second via the depletion of the labor supply of care workers from the global south as they move to the global north"). See also Bridget Anderson, "A Very Private Business: Exploring the Demand for Migrant Domestic Workers" (2007) 14 European Journal of Women's Studies 247 at 252 (noting that "agencies and employers can use 'nationality' as shorthand for 'race'"); Daiva K. Stasiulis and Abigail B. Bakan, *Negotiating Citizenship: Migrant Women in Canada and the Global System* (Toronto: University of Toronto Press, 2005) at 69. Most domestic work is gendered 'female' although some categories remain gendered male, sometimes with post-colonial overtones.

10. See also Saskia Sassen, "Global Cities and Survival Circuits," in Barbara Ehrenreich and Arlie Russell Hochschild, eds., *Global Woman: Nannies, Maids and Sex Workers in the New Economy* (New York: Henry Holt, 2002) 254 at 255-6 (stressing the importance of global cities that "concentrate some of the global economy's key functions and resources" in structuring this pattern, while arguing that "[t]hrough their work in both global cities and survival circuits, women, so often discounted as valueless economic actors, are cruicial to building new economies and expanding existing ones").

11. Parreñas, *supra* note 9 at 21. Crucially, Parreñas adds on the basis of her own research sample that "very few parents in my sample had been unemployed prior to migration. Moreover, only a handful were relegated to the informal labor sector. Many struggled with the limited salaries they earned, however, even as professionals" (*ibid*. at 20). It is important also to account for social remittances sent, such as those captured in the following interview of Miroslava, a Ukranian domestic worker in Austria who sends to her daughter in the Ukraine, not only money but also presents: "[F]or example goodies and surprises … For my daughter this is very interesting and she is happy to receive it. A bit of happiness in this hard life … Something cheap, but anyway. I put pineapples inside, honey … So that she knows she gets something from her mother." Bettina Haidinger, "Contingencies among Households: Gendered Division of Labour and Transnational Household Organization—The Case of Ukrainians in Austria," in Helma Lutz, ed., *Migration and Domestic Work: A European Perspective on a Global Theme* (Aldershot: Ashgate, 2008) 127 at 137. Haidinger adds that the sustenance is not unidirectional, as families from the Ukraine sometimes send personal items, newspapers, and winter clothes to the migrant domestic workers in Austria.

12. This language must be used critically. See Parreñas, *supra* note 9 at 141ff (insisting on including the "overlooked second generation" into the analysis); Yeates, *supra* note 1 at 18-34 (reflecting on the new international division of reproductive labour, which builds on existing patriarchal divisions of labour and is "strongly structured by ethnicity and 'race' as well as by class and gender"); and Pierrette Hondagneu-Sotelo, "The International Division of Caring and Cleaning Work," in Madonna Harrington Meyer, ed., *Care Work: Gender, Class, and the Welfare State* (New York: Routledge, 2000) 149 at 158–60 (illustrating how racial divisions of transnational reproductive labour have tended to be ignored, and inserting Latino immigrant workers into analyses of "transnational mothering" by "women with young children who are recruited for American jobs that pay far less than a 'family wage'").

but also for those of families "back home." Their disadvantage is structured and constructed through the current failure to liberalize the movement of persons.[13] It is this disadvantage on which "workers with family responsibilities"[14] depend for personalized, and increasingly privatized, care.

Feminist engagement with these intersections of class, race, nationality, and gender through research and activism over the rights of domestic workers has been significant.[15] Scholars and activists have insisted upon the role of the state, both in constructing domestic workers' oppression and in perpetuating it through the absence of state law.[16] They have also challenged state paternalism in the

13. The disadvantage is also constructed, in the sense that it reflects the remaining exclusion in trade law (as opposed to trade theory) of most migratory dimensions. Trade law's expansion to include trade in services offers minimal disciplines for Mode 4 of the *General Agreement on Trade in Services*, 15 April 1994, 1869 U.N.T.S. 183, on the movement of persons and relies heavily on what any given member state has included within its schedules. It recognizes and holds tightly to the sovereignty over the movement of persons across national borders that member states jealously claim. Most instruments on migrant workers navigate this divide delicately, conditioning migrants' rights to the regularity of their status. Yet the actual versus the legal movement of persons across national borders defies this statist, legalist logic—borders are porous, and some of our temporary schemes make them even more porous.

14. This rather neutral language is drawn upon by the ILO in the ILO *Convention on Workers with Family Responsibilities*, 1981 (No. 156).

15. While an exhaustive list would be overwhelming, a few pivotal books on the topic include Jacklyn Cock, *Maids and Madams: Domestic Workers under Apartheid* (London: Women's Press, 1980); Makeda Silvera, *Silenced: Talks with Working Class Caribbean Women about Their Lives and Struggles as Domestic Workers in Canada* (Toronto: Sister Vision Press, 1983); Elsa M. Chaney and Mary Garcia Castro, eds., *Muchachas No More: Household Workers in Latin America and the Caribbean* (Philadelphia: Temple University Press, 1989); Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (Berkeley: University of California Press, 1989) at 177-94, chapter 7, "Just Like One of the Family: Domestic Servants in World Politics"; Mary Romero, *Maid in the U.S.A.* (New York: Routledge, 1992); Bridget Anderson, *Britain's Secret Slaves: The Plight of Overseas Domestic Workers in the United Kingdom* (London: Anti-Slavery International, 1993); Bonnie Thornton Dill, *Across the Boundaries of Race and Class: An Exploration of Work and Family among Black Female Domestic Servants* (New York: Garland, 1994); Wenona Giles and Sedef Arat-Koç, eds., *Maids in the Market: Women's Paid Domestic Labour* (Halifax: Fernwood, 1994); Abigail B. Bakan and Daiva Stasiulis, eds., *Not One of the Family: Foreign Domestic Workers in Canada* (Toronto: University of Toronto Press, 1997); Grace Chang, *Disposable Domestics: Immigrant Women Workers in the Global Economy* (Cambridge, MA: South End Press, 2000); Pierrette Hondagneu-Sotelo, *Doméstica: Immigrant Workers Cleaning and Caring in the Shadows of Affluence* (Berkeley: University of California Press, 2001); Ehrenreich and Hochschild, *supra* note 10.

16. This is the case, in particular, of the literature on labour migration. Selected examples by Québec and Canadian legal scholars are Audrey Macklin, "Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?" (1992) 37 McGill Law Journal 681; Donna E. Young, "Working Across Borders: Global Restructuring and Women's Work" (2001) Utah Law Review 1; Louise Langevin et Marie-Claire Belleau, Le trafic des femmes au Canada : une analyse critique du cadre juridique de l'embauche d'aides familiales immigrantes résidantes et la pratique des promises par correspondance, Ottawa, Status of Women Canada, 2000; Sabaa A. Khan, "From Labour of Love to Decent Work: Protecting the Human Rights of Migrant Caregivers in Canada" (2009) 24 Canadian Journal of Law and Society 23; Chantal Thomas, "Migrant Domestic Workers in Egypt: A Case Study of the Economic Family in Global Context" (2010) 58 American Journal of Comparative Law 987.

construction of "vulnerability" that needs to be regulated.[17] Yet the literature on labour regulatory strategies to assist in the transformation of the domestic work relationship is only recently starting to emerge, in large measure because of a long-awaited initiative to develop an international labour standard on "decent work for domestic workers."

This introductory article has two dimensions that are addressed simultaneously. First, it focuses on the international developments, to highlight and explore some of the findings of the International Labour Organization's (ILO) law and practice report on *Decent Work for Domestic Workers*.[18] Second, it reflects on the contributions in this special issue to the broader deliberative process of identifying and critiquing labour regulatory frameworks as an empowerment strategy for historically marginalized women, such as domestic workers. This introduction suggests that a labour regulatory framework that both secures domestic workers rights in context and creates an enabling framework to support domestic workers' exercise of agency is a crucial part of a reconstructionist project, which that may accompany, but is not a substitute for, a broader project of social transformation.

History of International Standard Setting on Decent Work for Domestic Workers

It was in 1948, near the end of the ILO's temporary wartime relocation to McGill University, that the International Labour Conference (ILC) adopted its first resolution on the conditions of employment of domestic workers.[19] A significant number of ILO members had launched detailed studies to attempt to explain why there was a consistent shortage of applicants for domestic work even during the Depression years, despite a highly elastic demand.[20] Rather than improve the

17. For an important recent discussion, see Shireen Ally, *From Servants to Workers: South African Domestic Workers and the Democratic State* (Ithaca: Cornell University Press, 2009) (challenging the "democratic statecraft [that] introduced and enacted the extension of rights to domestic workers on the basis of their 'vulnerability'" (at 12)).
18. ILO, *Decent Work for Domestic Workers*, *supra* note 1 at 16.
19. ILO, *Record of Proceedings*, ILC 30th Session, 1948, Appendix XVIII: Resolutions adopted by the Conference, (San Francisco) at 545-54. For a comprehensive list of ILO historical attempts to regulate domestic work, see Asha d'Souza, *Moving toward Decent Work for Domestic Workers: An Overview of the ILO's Work*, Bureau for Gender Equality Working Paper no. 2 (Geneva: ILO, 2010) at 42.
20. See notably Erna Magnus, "The Social, Economic, and Legal Conditions of Domestic Servants: I" (1934) 30 International Labour Review 190; Erna Magnus, "The Social, Economic, and Legal Conditions of Domestic Servants: II" (1934) 30 International Labour Review 336 (analyzing results from surveys in Great Britain, Germany, Switzerland, the United States, and Sweden). Magnus called among other measures for domestic workers' conditions of employment to be regulated by "special legislation" and inclusion in existing social protection mechanisms, vocational training to transform domestic work into a "skilled occupation" to raise domestic workers' social status, to encourage the live-out relationship to "mitigate the rigidity" associated with living in an employer's household, and to promote domestic workers' collective organization "since the further organisation spreads among domestic workers … the

conditions of domestic workers, industrialized market economies had chiefly relied on special immigration regimes to encourage labour migration by foreign women to perform domestic work. When female unemployment increased in other occupations during the Depression, a number of national authorities reacted by restricting labour migration, as they "naturally sought to create openings on the home market."[21] Yet studies such as that conducted in France in 1931 suggest that "attempts made to transfer women workers from industry to domestic service had failed."[22] Researchers concluded that domestic work itself was not the reason why women resisted taking up this employment.[23] Rather, domestic work was a laden social status, in which women became servants, subordinating privacy and autonomy to control by the masters'—indeed mistress'—household.[24] National authorities, nonetheless, put faith in the ability of law to improve conditions by recognizing domestic workers as workers, and international law was called to respond.[25]

Yet again in 1965, following the wave of political independence of former colonial territories, the ILO adopted a resolution recalling the "urgent need" for standards on domestic work that would be "compatible with the self-respect and human dignity which are essential to social justice for domestic workers."[26] A survey of the employment and conditions of domestic workers in private households was commissioned at the time, showing that domestic workers were "particularly devoid of legal and social protection," "singularly subject to exploitation," and that their "legitimate interests and welfare [had] long been neglected in most

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more capable they will become of collaborating in the regulation of their own living and working conditions" (at 364).

21. Magnus, Part I, *supra* note 20 at 194.

22. *Ibid.* Although there was a fall in demand for domestic workers during the Depression, there was an increase in internal migration of young women from rural areas. The French study also noted the impact of "a large number of unemployed hotel servants" (*ibid.*). The French study from December 1931 cited by Magnus is entitled: "Le chômage et la crise des domestiques," Bullletin du Ministère du Travail et de la Prévoyance Sociale, April–June 1932.

23. See Magnus, Part II, *supra* note 20 at 362.

24. See, for example, McKeon, *supra* note 2 at 212-22 (mapping the subdivision of "inside spaces" in seventeenth-century England in which the ritualized, social subordination by the master of the servant took place, and illustrating the "inapplicability of a consistent 'public versus private' distinction" given their "real but locally variable utility in this system, whose organizing coordinates are determined rather by a status hierarchy" (at 221)). See also Jeannie Suk, *At Home in the Law: How the Domestic Violence Revolution Is Transforming Privacy* (New Haven: Yale University Press, 2009) (studying the notion of privacy in the "home" in US law, characterized as a man's right to protect family from an intruder, but having to shift to imagine the "subordinated" woman in the home. Suk posits that "[l]aw makes and unmakes the home" (at 105) although she does not quite contemplate that the subordinated woman might not be a spouse, but a domestic worker).

25. Magnus, Part I, *supra* note 20 at 199 ("The fact that in recent years laws to regulate domestic service have been adopted or drafted in several countries [footnote omitted], the reasons put forward in their support [footnote omitted], and the results expected from them, are indications that the unsatisfactory legal status of domestic servants and the absence or unsuitability of statutory regulations have also contributed to lower the standing and diminish the attraction of the occupation").

26. *Official Bulletin* (Geneva), Vol. XLVIII, No. 3, July 1965, Supplement I, 20-1.

countries."[27] Despite the expressed urgency, no standard setting emerged. Moreover, while international labour standards were generally considered to apply to domestic workers,[28] other international labour standards either specifically excluded domestic workers from their scope or included "flexibility clauses" that allowed members to exclude domestic workers on ratification or on filing their first compliance report to the ILO.[29]

The supervisory bodies of the ILO—in particular, the Committee of Experts on the Application of Conventions and Recommendations (CEACR)—have called for labour standards to be extended to domestic workers, maintaining that the specificity of domestic work should not lead to exclusion but, rather, to meaningful regulatory action.[30] The permanent secretariat of the ILO, the International Labour Office has responded to a number of requests for technical assistance on labour

27. A report on the survey was subsequently published as "The Employment and Conditions of Domestic Workers in Private Households: An ILO survey" (1970) 102 International Labour Review 391.

28. The ILO takes the position that "unless a Convention or Recommendation expressly excludes domestic workers, [the] workers are included [within the] instrument's scope." ILO, *Decent Work for Domestic Workers*, *supra* note 1 at 16. See ILO, Office of the Legal Advisor, Legal Opinion of 29 July 2002 [on file with the author].

29. See ILO, *Decent Work for Domestic Workers*, *supra* note 1 at 16-24. The report proceeds to offer a close assessment of the use of flexibility devices in international labour standards and their strict monitoring by ILO supervisory bodies. There is a paradox in the considerable time and effort employed by ILO members during conference committee sessions to craft flexibility clauses, which in practice tend to be used by very few. The Report concludes both that the reflex to exclude domestic work may reflect the fact that the primary focus was "economic activity carried out in an industrial context." It urges that special attention to domestic work through a new standard on regulating decent work for domestic workers coupled with technical guidance from the ILO on how to regulate appropriately is a more appropriate response than perpetuating exclusions (*ibid.* at 24).

30. For the ILO, "unless a Convention or Recommendation expressly excludes domestic workers, these workers are included in the international instrument's scope" (*ibid.* at 16). See also Magnus, Part II, *supra* note 20 at 348-9 (reporting that in 1932, an International Labour Conference committee discussing the minimum age for the admission of children to employment in non-industrial occupations entered into "protracted" discussions about whether to exclude child domestic workers or to allow national authorities the latitude to do so. Magnus considered the instrument to be "of the greatest social importance" given that the dangers of employing children in domestic work were "as great in this as in other occupations." In 1991, the government of South Africa agreed to a visit by the ILO's Fact-Finding and Conciliation Commission on Freedom of Association (FFCC), which produced a report that explored the link between domestic workers' living conditions and their freedom of association rights. For the FFCC, "the exclusion of farm workers and domestic workers from the provisions of the [*Labour Relations Act*, No. 28 of 1956 of South Africa] is one of the most serious problems affecting freedom of association in South Africa." The FFCC explained that "although there is nothing in South African law which prohibits [domestic workers] from forming or joining the trade union of their choice, there is, at the same time, nothing which protects … domestic workers from being victimized or dismissed (with consequential eviction in most cases from their homes) for trade union membership or activities … Moreover, the absence of an effective statutory framework means that their unions have no legal basis on which they can claim the right to bargain collectively on behalf of their members, nor do the workers or their unions enjoy any protection in the event of strike action." ILO, *Official Bulletin* (Special Supplement) Vol. LXXV, 1992, Series B, p. 8, at para. 723.

law reform in this field, most notably when South Africa emerged from political apartheid and embarked upon labour law reform. In this case, South Africa needed to respond to one of the most potent remaining symbols of apartheid, in which a significant number of black women were likely to remain as domestic workers in middle-class, but increasingly racially diverse, households.[31]

Despite the compelling history suggesting the overdue nature of this normative action, it was not until March 2008 that the Governing Body of the ILO decided to place the issue of international standard setting on the agenda of the ILC for a standard double discussion, to be held in June 2010 and June 2011. Officials in the permanent secretariat, the International Labour Office, contacted me and asked me to write the law and practice report on *Decent Work for Domestic Workers* and draft the accompanying questionnaire. This report would serve as the basis upon which the ILO constituents could determine whether standard setting should proceed.[32]

The report considers the status of existing international labour law applicable to domestic workers and entailed a review of laws applicable to seventy-two ILO members, representing 80 percent of the world's population and focusing on the application of those laws to domestic workers.[33] The report proceeds cautiously on the assumption that "unless domestic workers are explicitly excluded from the scope of labour legislation they are included,"[34] as a way to recognize the domestic

31. In response to a request for technical assistance, I was asked by the International Labour Office in 1993 to prepare a study that would canvass the ILO standards and comparative law examples on regulating domestic workers. It was subsequently revised, updated, and published as Adelle Blackett, *Making Domestic Work Visible: The Case for Specific Regulation*, Labour Law and Labour Relations Programme Working Paper no. 2 (Geneva: ILO, 1998). For a brief commentary on ILO involvement in the broader labour law reform process in South Africa, see Bob Hepple, *Labour Laws and Global Trade* (Oxford: Hart Publishing, 2005). For a disabusing discussion of the relationship of domestic workers to their positions in the post-apartheid context, emphasizing the "importance of workers themselves in the historical, current, and hopefully, future contours of paid domestic work in South Africa" (at 64), see Ally, *supra* note 17 at 60-4.

32. The constituents' replies are analyzed and published in the second ILO report. A number of McGill students and recent graduates supported me as research assistants for the ILO's *Decent Work for Domestic Workers*. I take this opportunity to acknowledge in particular Tatiana Gomez, LL.B. and B.C.L., 2008, who provided research assistance throughout the short, intense drafting period from summer to fall 2008. I also thank Maude Choko, currently a D.C.L. candidate at McGill and undergraduate law students Alika Hendricks, LL.B. and B.C.L., 2009, and Mae Nam, current LL.B. and B.C.L. candidate, for targeted research assistance. Colleagues at the ILO provided crucial back-stopping support, notably by identifying some of the legislative sources and statistical data, obtaining memoranda of understanding, and information on the use by member states of flexibility clauses, compiling most of the charts and tables, and writing the chapter on "the ILO and other international initiatives" (chapter IX). One ILO official subsequently published his survey of memoranda of understanding. See Naj Ghosheh, "Protecting the Housekeeper: Legal Agreements Applicable to International Migrant Domestic Workers" (2009) 25 International Journal of Comparative Labour Law and Industrial Relations 301.

33. ILO, *Decent Work for Domestic Workers, supra* note 1 at 25.

34. *Ibid.* at 26.

workers' entitlement to labour rights coverage and to ensure that the standard setting and broader regulatory starting point would be that of equality with other workers. However, the report acknowledges the magnitude of the gulf between the law on the books and the law on the ground where domestic workers are concerned.[35] To hope to come close to capturing the regulatory landscape, it was necessary both to attempt to render visible the non-state norms governing domestic work and to focus on those legislative initiatives in which domestic workers were specifically regulated.[36]

The report finds that the landscape for regulating domestic work is dynamic, with an emerging and increasing number of specific regulatory frameworks put in place in nation states of the global South and North. Examples that inspired varying degrees of optimism for their attention to the specific regulation of domestic work with a view to promoting equality in some aspects of labour rights could be identified in places as disparate as France,[37] Uruguay,[38] South Africa,[39] and Hong Kong.[40] The sense of the timeliness to address the issue of regulating decent work for domestic workers could be seen in proposed regulatory initiatives and requests for ILO assistance.[41]

While highlighting such examples, I was under no illusion that special regulatory mechanisms were actually systematically applied or enforced in most jurisdictions. The gap between the law on the books and the practice on the ground could be filled-in precisely from the continuing proliferation of literature and activism over domestic workers' conditions. The decision to commission[42] and solicit studies

35. *Ibid.* ("in many parts of the world that assumption is quite likely misleading and bears little relevance to the way domestic work is regulated in practice").
36. There was limited space within the framework (and strict page limits) of the *Decent Work for Domestic Workers* to examine closely, and from a pluralist theoretical framework, non-state norms governing domestic work, although some theorization of the specificity of domestic work and its regulatory implications when equality is at issue are found throughout the report, notably in discussions of working time and regulating informality.
37. France has adopted a national collective agreement, negotiated by the trade unions and employers' organizations deemed representative, and legislatively extended to cover the entire national workforce. See Convention collective nationale no. 3180 sur les Employés du particulier employeur, 24 November 1999, extended on 2 March 2000, JORF, 11 March 2000.
38. Experimentation with wage-fixing mechanisms has been extensive in Uruguay. See ILO, *Decent Work for Domestic Workers, supra* note 1 at 46.
39. South Africa, "Basic Conditions of Employment Act, No. 75 of 1997 Sectorial Determination 7: Domestic Work Sector, South Africa," *Government Gazette*, volume 446, no. 23732 (15 August 2002), South African Department of Labour, <http://www.labour.gov.za/downloads/legislation/sectoral-determinations/basic-conditions-of-employment/Sectoral%20Determination%207%20-%20Domestic%20Workers.pdf > .
40. Civil society organizations have been actively engaged in organizing initiatives, and migrant workers' rights have been accentuated.
41. This included requests from some of the ILO members who had faced reports of particularly egregious abuses. See ILO, *Decent Work for Domestic Workers, supra* note 1 at 8.
42. Given the particular dearth of literature on regulating domestic work in sub-Saharan Africa other than in South Africa, the ILO agreed to commission a background study on Ghana, which was subsequently published as a working paper. See Dzodzi Tsikata, *Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice*, Conditions of Work and

for a special issue on regulating decent work for domestic workers developed from the knowledge that the information obtained for the report "though considerable, is far from complete [and] should therefore only be taken as indicative."[43] This special issue aims to continue and deepen a process of ongoing reflection and experimentation with regulatory approaches to domestic work in distinct national jurisdictions.

Framing the Regulation of Decent Work for Domestic Workers

A central theme emerging from the law and practice report is the importance of establishing regulatory frameworks as part of the reconstructive process of moving from a status relationship to a work relationship. The ILO's starting point is not simply to valorize employment as such. Rather, work relationships must be imbued with values of human dignity and equality, free of the compulsion of forced labour and child labour, characterized by the exercise of agency through the effective recognition of freedom of association and collective bargaining rights. The transition is therefore from an exploitative, socially marginalized status, to what the ILO refers to as a "decent work" core. Therefore, the law and practice report frames the notion of decent work for domestic workers in a manner that encompasses both respect for their self-definition as workers and enabling frameworks to undergird domestic workers' agency to self-organize and militate for conditions of employment through the effective exercise of freedom of association rights. It emphasizes an enabling—rather than paternalistic—state and international responsibility to ensure the transition from status to work.[44]

The standard-setting process entails rethinking the manner in which domestic work has been conceptualized.[45] This is problematized by considering historical approaches, in which special, inequitable laws on domestic work required the worker to perform all required duties "within the reasonable limits of their physical strength and moral welfare"[46] and admitted a general principle deemed "inevitably [to follow] from the nature of domestic service" that domestic worker employed to undertake specific duties must also undertake other work if urgently required to do so.[47] The law and practice report devotes an entire

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Employment Series no. 23 (Geneva: ILO, 2009), ILO, <http://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—travail/documents/publication/wcms_145332.pdf > .

43. ILO, *Decent Work for Domestic Workers, supra* note 1 at 25.
44. *Ibid*.
45. The ILO's International Standard Classification of Occupations classifies work in "private households" alongside work in commercial establishments and institutions in respect to housekeeping and related workers, as well as personal care (Classification 5); it also classifies "domestic and related helpers, cleaners and launderers" in respect of private households, hotels, offices, hospitals, and other establishments (Classification 9). See "International Standard Classification of Occupations," ILO, <http://www.ilo.org/public/english/bureau/stat/isco/index.htm > .
46. Magnus, Part I, *supra* note 20 at 206 (citing Portugal, Yugoslavia and Hungary).
47. *Ibid.* (citing Switzerland and Denmark).

chapter to challenging such characterizations, surveying how different states have attempted to apprehend what is viewed as the "particularity" of domestic work. While some regulators have stressed the non-lucrative character of domestic work, the emphasis seems to build on the perception that domestic work belongs to the "reproductive" hence "un-productive" personal care services sector, as both Adam Smith and Karl Marx characterized them.[48] This dichotomization of domestic work as "work in the service of consumption … not regarded as productive work"[49] runs the risk of overlooking the historical[50] and

48. See Adam Smith, *The Wealth of Nations* (London: J.M. Dent and Sons, 1910), volume I at 294-5, Chapter 3, "Of the Accumulation of Capital or of Productive and Unproductive Labour ("There is one sort of labour which adds to the value of the subject upon which it is bestowed; there is another which has no such effect. The former as it produces a value, may be called productive, the latter, unproductive labour. Thus the labour of a manufacturer adds, generally, to the value of the materials which he works upon, that of his own maintenance, and of his master's profit. The labour of a menial servant, on the contrary, adds to the value of nothing. Though the manufacturer has his wages advanced to him by his master, he, in reality, costs him no expense, the value of those wages being generally restored, together with a profit, in the improved value of the subject upon which his labour is bestowed. But the maintenance of a menial servant never is restored. A man grows rich by employing a multitude of manufacturers; he grows poor by maintaining a multitude of menial servants. The labour of the latter, however, has its value, and deserves its reward as well as that of the former. But the labour of the manufacturer fixes and realizes itself in some particular subject or vendible commodity, which lasts for some time at least after that labour is past. It is, as it were, a certain quantity of labour stocked and stored up, to be employed, if necessary, upon some other occasion. That subject, or what is the same thing, the price of that subject, can afterwards, if necessary, put into motion a quantity of labour equal to that which had originally produced it. The labour of the menial servant, on the contrary, does not fix or realize itself in any particular subject or vendible commodity. His services generally perish in the very instant of their performance, and seldom leave any trace of value behind them, for which an equal quantity of service could afterwards be procured"). Karl Marx, *Capital: A Critical Analysis of Capitalist Production*, translated by Samuel Moore and Edward Aveling (London: Swan Sonnenschein, Lowrey and Company, 1887) volume II at 447-8: (reasoning as follows: "the extraordinary productiveness of modern industry, accompanied as it is by both a more extensive and a more intense exploitation of labour-power in all other spheres of production, allows of the unproductive employment of a larger and larger part of the working-class, and the consequent reproduction, on a constantly extending scale, of the ancient domestic slaves under the name of a servant class, including men-servants, women-servants, lackeys, &c").

49. Magnus, Part I, *supra* note 20 at 198.

50. See, for example, Pope Melish, *supra* note 2 at 20 (contending that "[i]f … nonmarket household labor in fact has value to the economy as a whole, by increasing the standard of living and by enhancing the market-oriented productivity of other household members, then the impact of slavery in New England has been vastly underrated"). See also Carolyn Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge: Cambridge University Press, 2009) at 355-6 (making the compelling case that domestic workers were the working class, adding that "we would have had a very different history of this time and place if Adam Smith had not said that the servant's work was *not* work and if Karl Marx had not followed him, and said that we could discount service labour in our accounts of capitalist modernity"). McKeon, *supra* note 2 at 178-9 (noting that while women's hidden investment contributed to the flourishing of the so-called "family enterprise" increasingly intertwined with market production, housework was increasingly shaped as women's work "denigrated not only for its unproductivitity," which was akin to other public services and professions, but also because when wives undertook the work, it was unwaged).

contemporary contribution of women's unpaid and often racialized women's paid labour to the productive economy. In addition to the substance, the language used to define domestic work as work became pivotal.

Much of the legislation surveyed simply listed the specific job classifications within the umbrella of domestic work in lieu of offering a definition.[51] The attempts to define were often troubled. Attempts, for example, to single out "cleaning and assistance peculiar or inherent in the household"[52] offered limited illumination as that work takes place and is regulated beyond the household. The location where the work takes place has framed the workplace rules that apply to it as well as its status. The report concludes that

> [t]here is no fundamental distinction between work in the home and work beyond it, and no simple definition of public-private, home-workplace and employer-employee. Caring for children and the disabled or elderly persons in the home or in a public institution is all part of the same regulatory spectrum, wherein a range of migration and other policies shape both the supply of and the demand for care services.[53]

The report offers a close look at the work as well as the expectations, which are then held up to a labour regulatory logic that would prevail for comparable work, often but not exclusively, personal service work.[54] Implicitly, it scrutinizes whether traditional paternalistic justifications offered to support a distinction hinging exclusively on location in the home, such as "direct dependency on the head of the household" and a particularly personal form of subordination,[55] are valid

51. Table III.1 in the report gives a non-exhaustive list of the vast array of categories of domestic work, as well as their coverage under national legislation. See ILO, *Decent Work for Domestic Workers, supra* note 1 at 31.
52. *Chilean Labour Code*, Article 146.
53. ILO, *Decent Work for Domestic Workers, supra* note 1 at 11. Jurisdictions such have Switzerland have instead focused on the economic contributions of domestic service work, referring instead to the "domestic economy." See Switzerland, *Ordonnance sur le contrat-type de travail pour les travailleurs de l'economie domestique* (*Federal Ordinance on the Standard Labour Contract for Workers in the Domestic Economy*) (CTT économie domestique), Recueil Officiel du droit fédéral, No. 45, 16 November 2010.5053, Federal Authorities of the Swiss Confederation, <http://www.admin.ch/ch/f/as/2010/5053.pdf>. This language is also used in a number of the canton-level standard labour contracts in the Swiss republic. It is worth noting, however, that the language of "économie domestique" has a dual, older meaning, referring to the study of the management of the home, or "home economics."
54. The ILO's normative framework addresses working conditions in heavily gendered sectors that entail personal or care services, including nursing. See the ILO *Nursing Personnel Convention*, 1977 (No. 149). The preparatory work drew inspiration from a broad range of general and sector specific standards, not least of which included standards affecting a predominantly male category of workers required to live in their workplace often far from their homes: seafarers. See the ILO *Maritime Labour Convention*, 2006.
55. Bruno Veneziani, "The Evolution of the Contract of Employment," in Bob Hepple, ed., *The Making of Labour Law in Europe* (London: Mansell Publishing, 1986), 31 at 45.

reasons to treat the work differently or rationalizations proffered to retain the law as the metaphorical handmaiden perpetuating the domestic work relationship as one of status.

Focusing regulatory efforts on the specific nature of the work performed by domestic workers and comparing it to comparable work performed outside of the home has a tendency to make the skill level required for domestic work more visible.[56] The approach parallels an equal pay for work of equal value analysis, conveying how the work has been constructed around racialized, patriarchal norms attached to the bodies undertaking the work in someone else's home rather than to the skill. The approach recognizes and challenges gendered, racialized, and, to some extent, transnational labour market segmentation. And the proceedings of the first session of the ILC illustrate that, time and again, delegates would return to first principles on domestic work by identifying the nature of the work, thinking about how the work is regulated in other contexts, challenging non-state norms about how the work is to be understood, and holding the assumptions about domestic work (whether embedded in current state law or in practice) up to the light of labour law principles.[57] The regulatory approach entailed identifying domestic workers as workers, comparing their conditions with those in other work relationships, and insisting that an equality perspective should be adopted to emphasize not necessarily sameness of treatment (work like any other) but also the need for differential, affirmative treatment, which recognizes the relationship between

56. This process is revealed in the detailed articulation of responsibilities flowing from the French CCN. See also the parallel process that has developed via the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) increasingly detailed observations on domestic work. ILO, *Decent Work for Domestic Workers, supra* note 1 at 18.

57. See ILO, *Provisional Record Fourth Item on the Agenda: Decent Work for Domestic Workers*) 99th session (Geneva: ILO, 2010), <http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—relconf/documents/meetingdocument/wcms_141770.pdf>. Examples provided of removing "living in" as a requirement yet regulating living conditions where they are provided, drawing on other sectors and sectoral international labour standards, included reflecting on the need for separate, private rooms with lock, linking entry visas to ensuring that the condition is in place, ensuring that domestic workers do not summarily lose access to their living space if employment is terminated, and rethinking whether room and board should be deductable from wages when living in is an employer preference. Much work was also done on rethinking working hours, challenging assumptions about night work, and based on examples in other sectors, considering the feasibility of on-call time. Two particular challenges remain: method of remuneration and the issue of privacy. While the former at some level reflects attempts to grapple with informality in developing country contexts, the privacy issue transcended geographical location and very much went to the heart of the concern about home spaces. See the discussion later in this introduction. It is worth noting as well that this definition of home and the subject of regulation is captured in attempts to define who in the family is responsible for care work. See, for example, Panama's Resolution no. 39, 2007, which offers a detailed articulation of the nature and degree of relationship that is covered, and specifically excludes the employer's spouse and children. Non-Western, non-nuclear notions of the family are to some extent related to this configuration of the household. See discussion in ILO, *Decent Work for Domestic Workers, supra* note 1 at 33, para. 115.

reproduction and human dignity[58] and is aimed at rooting out structural discrimination that perpetuates the undervaluation of care provided by paid domestic workers in the home (work like no other).[59]

Two contributions to this special issue—one from one of the largest democratic states in the global South, India, the other from a state often considered a model of social equality in the global North, Sweden—critically review the historical and current legislative frameworks in the respective countries. Both come to the conclusion that the standards fall far short of international decent work aspirations. In "The Absence of State Law: Domestic Workers in India," Neetha N. and Rajni Palriwala provide a contextualized demographic analysis of domestic workers and offer a unique composite portraying the increased demand for their work and supply of relocated women workers in the maintenance of a patriarchal division of labour.[60] They identify a "litany of lapsed bills and disregarded recommendations"[61] to illustrate that despite considerable effort on the part of social actors including the workers themselves, "[d]omestic workers are largely absent from state policy in India, be it in labour laws or social policy."[62] The reasons for this failure include a complex mix of neo-liberal policies discouraging labour protection generally and the persistence of an untenable separation of the home and the workplace specifically. They question the tendency to focus law reform initiatives on full-time domestic workers, who constitute a small proportion of the workforce, and to overlook the new but pervasive nature of the placement agency. Barriers to workers' organization into trade unions compound the law reform challenge, just as they make it more critical. They also cite the numerous organizing initiatives and tellingly identify the challenges associated with regulating domestic workers' wages as one of the reasons why some unionization initiatives have fallen apart. They note the counter-political pressures when domestic workers do gain legislative reforms. Even though the strongest legislative developments have been in the area of

58. See notably Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage Books, 1997) at 287-8. Roberts focuses on reproductive liberty. The focus here is on the broader concept of social reproduction.

59. Sector-specific international labour standards confirmed the importance of this approach and were of real guidance in identifying regulatory strategies that addressed issues such as valuing "invisible" skills, limiting and remunerating working time to preserve autonomy and ensure proper compensation, ensuring decent living conditions. See notably the comprehensive *Maritime Labour Convention*, *supra* note 54, as well as the *Nursing Personnel Convention*, *supra* note 54, and to a lesser extent the ILO *Hours of Work and Rest Periods (Road Transport) Convention*, 1979 (No. 153).

60. The authors' attention to the inter-generational character of internal migrants from discriminated against castes in domestic work, with younger women taking over the jobs of their mothers or mothers-in-law is particularly noteworthy. Neetha N. and Rajni Palriwala, "The Absence of State Law: Domestic Workers in India" [in this volume].

61. *Ibid*.

62. *Ibid*.

"social welfare" measures, the specificity of paid women workers has been ignored. The authors contend that the regulation of wages and working conditions of domestic workers must be accompanied by a recognition of the home as a workplace and in tandem with a broader gendering of regulatory initiatives related to regulating the informal economy.

Catharina Calleman acknowledges in "Domestic Services in a 'Land of Equality': The Case of Sweden" that although Sweden may not first come to mind in relation to domestic work it does not live up to international standards or the aspirations of the standard-setting initiative. Calleman offers an historical account of the regulation of domestic work, from strict subordination through indentured servitude, then from exclusion to some degree of protection under labour legislation. She notes that the 1944 *Act on Housemaids* was essentially part of a labour recruitment and natalist population promotion policy, which was adopted to "ease the burden of domestic work for well-off women, thereby encouraging them to bear and to rear children."[63] Illustrating the way that migration and labour policies intertwined to "produc[e] difference according to gender and nationality,"[64] Calleman identifies ways in which an equality-promoting public social welfare system—built on the conviction that "work in private households was disappearing and would be replaced by more collective forms of work, where labour could be used more efficiently"[65]—was increasingly undone in the 1990s. Demographic shifts increased demand, and liberalizing, transnationalizing measures increased the supply of domestic workers from within the European Union (EU) and beyond and permitted formerly banned private employment agencies to structure international agreement. Calleman questions the effectiveness of the tax reductions, focused not on the worker but, rather, on "the customer, which is more often than not presumed to be a heterosexual couple or family."[66] Calleman's study suggests that Sweden innovates in some measures, notably allowing limited labour inspection in households that hire domestic workers, but falls behind on issues such as the absence of a statutory minimum wage for domestic workers who do not have access to the collective agreement structure through which workers under general rules in Sweden gain access to industry-wide wages. Calleman concludes that regulation and protection of domestic work may constitute a short-term solution but rests on the conviction that "the way out of this inequality and vulnerability in the long run must involve the collectivization of domestic tasks" and a more equitable gender bargain.[67]

63. Calleman, *supra* note 5.
64. *Ibid*.
65. *Ibid*.
66. *Ibid*.
67. *Ibid*.

The decision to treat domestic workers as workers is a challenge to deeply rooted societal exclusions expressed through law. Domestic work is often conceptualized as being other than employment[68] and has unmistakable roots in older status-based forms, most notably domestic slavery.[69] The master-servant relationship at the origin of modern employment law evokes most starkly the domestic work relationship, and private law rules regulating the contract of employment have applied to domestic workers in many jurisdictions.[70] Yet formal employment rules have rarely been the whole law governing the domestic work relationship. While the "individual contract of employment is the rule,"[71] the impact of custom and local usage has historically been strong and has characterized much

68. See Veneziani, *supra* note 55 at 46 (noting that both civil law and common law jurisdictions initially governed the domestic employment relationship through family law).

69. See, for example, Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family, from Slavery to the Present* (New York: Basic Books, 2010) at 24-5 (arguing that "[n]ot surprisingly … interviews with former slaves suggest that the advantages of domestic service over fieldwork for women have been exaggerated in accounts written by whites. Fetching wood and water, preparing three full meals a day over a smoky fireplace, or pressing damp clothes with a hot iron rivaled cotton picking as back-breaking labor. Always 'on call' … [domestic slaves] suffered all kinds of abuse, from jabs with pins to beatings that left them disfigured for life. The master's house offered no shelter from the most brutal manifestations of slavery"). See also Alana Erickson Coble, *Cleaning Up: The Transformation of Domestic Service in Twentieth Century New York City* (New York: Taylor and Francis, 2006) (offering a disturbing account of the "Bronx Slave Market," during the Great Depression, in which black women were displaced from positions such as cooks and nurses in domestic work by white women and forced onto street corners taking even more precarious, "crushing and sometimes hazardous" work such as washing windows inside and out in high-rise apartments) (at 60); Joy M. Zarembka, "America's Dirty Work: Migrant Maids and Modern-Day Slavery," in Ehrenreich and Hochschild, *supra* note 10, 142. The persistence of slavery in domestic work, despite the existence of anti-slavery legislation is acknowledged as well by the ILO's CEACR. See, for example, ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*: *Report III (1A)*, ILC, 97th Session (Geneva: ILO, 2008) at 235-6 (Niger); CEACR, *Individual Observation Concerning Convention no. 29, Forced Labour, 1930 Sudan* (ratification: 1957) (published: 1999), ILO, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=4441&chapter=6&query=Sudan%40ref&highlight=&querytype=bool>. It has also addressed the resurgence of contemporary forms of slavery and forced labour in domestic work.

70. See Veneziani, *supra* note 55 at 45 (citing in particular France, the Netherlands, Belgium, and Italy, which applied core Roman law derived civil law principles on *location conduction operarum* (one party letting his or her services to another), which was an extension of *locatio servi* (historically, letting the use of a slave)). See also Carolyn Steedman, *Master and Servant: Love and Labour in the English Industrial Age* (Cambridge: Cambridge University Press, 2007) at 178 (insisting that Blackstone contrasts live in domestics, characterized as "menial servants," not with charwomen or other domestic workers who lived out, but rather with workers undertaking non-domestic service "under contract … and who were subject, like menials, to the substantial and extensive law of service").

71. Magnus, Part I, *supra* note 20 at 202. These could take the form of specific or general laws. Magnus notes, however, that collective agreements were extremely rare. See also Hondagneu-Sotelo, *supra* note 12 at 151-4 (situating the use of coercive, gendered, racialized labour contract systems that brought temporarily recruited men as "pure workers, not as human beings

of the troubled "common sense" of governing domestic work into the present.[72] This is in the tradition of much contemporary scholarship, which has offered cogent critiques of the popular, opportunistic characterization of domestic workers as "*like* one of the family."[73] These critiques have been deepened by close attention to the humanizing characterizations of their own work brought by domestic workers,[74] and the aspirations that many seek to be treated not with paternalism or maternalism[75] but, rather, with humanism.[76]

The law and practice report insists upon the need to infuse the domestic work relationship with a decent work paradigm, which would emphasize rights-based, rather than status-based, relationships. This transition, familiar to the story of labour law but part of the troublingly present vestiges of the conditions of contemporary domestic work,[77] seeks to affect the "realm of indignities,"[78] which is so much a part of the day to day of the "home-workplace," by contextualizing and applying a workplace paradigm.[79] The report also "recognizes to what extent a

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enmeshed in family relationships" (at 152) into the United States from Mexico, China, the Philippines, and Japan into this discussion). Men were also brought from the Caribbean.

72. See Magnus, Part I, *supra* note 20 at 201. The impact of civil procedure and evidentiary rules that disfavoured domestic workers has also been explored in historical texts. See notably Jacqueline Martin-Huan, *La longue marche des domestiques en France du XIXe siècle à nos jours* (Nantes: Éditions OPERA, 1997) at 47-9.
73. See notably the critique in Bakan and Stasiulis, *supra* note 15.
74. See, in particular, Fatima El Ayoubi, *Prière à la lune* (Paris: Éditions Bachari, 2006). Many researchers in this area provide significant space for domestic workers' voice through interviewing. One notable early Canadian example is Silvera, *supra* note 15.
75. ILO, *Decent Work for Domestic Workers, supra* note 1 at 12, para. 45 ("[i]t can . . . divert attention from the existence of an employment relationship, in favour of a form of paternalism that is thought to justify domestic workers being asked to work harder and longer for a 'considerate' employer without material reward. In fact, these arrangements are the vestiges of the master-servant relationship, wherein domestic work is a 'status' which attaches to the person performing the work, defines him or her and limits all future options").
76. See Hondagneu-Sotelo, *supra* note 15 at 207-9.
77. This claim was made by those who studied the application of master and servant law and employment law to domestic workers in the 1930s. For Erna Magnus, "it is evident . . . that where domestic servants are covered by the general law concerning contracts of employment and where their employment is governed by special laws their position is much the same as that of other workers. It becomes exceptional only where the older special laws, based partly on outworn patriarchal customs, still apply, and where domestic servants are not recognized as workers by the laws which safeguard the legal status of labour in general." Magnus, Part I, *supra* note 20 at 207.
78. See Hondagneu-Sotelo, *supra* note 15 at 216 (attributing the expression to a lawyer working in defense of domestic workers, Sarah Cohen).
79. A related transition relevant to young women that needed to be confronted in the report was the conceptualization of the "au pair" relationship as an exception. Viewed as a cross-cultural experience allowing young persons to travel abroad and live with a family overseas, the au pair experience is also a work dimension through which au pairs are expected to earn their board, lodging, and pocket money often by providing domestic work in the form of childcare and housekeeping. Self-regulated since 1994 by the International Au Pair Association, the au pair program has been the source of consternation on reports of abuse and ill treatment in one case leading to suicide. The Council of Europe concluded that "au pairs are not meant to work as replacement housekeepers or nannies, but some of them end up being exploited in this way, or

failure to regulate the employment of domestic workers infringes upon their autonomy, dignity and security."[80] To regulate to eliminate slavery and forced labour conditions, root out racial and sexual discrimination, equitably regulate domestic workers conditions of employment, provide social protection and ensure equal access to freedom of association and collective bargaining,[81] it is necessary to acknowledge both the economic importance of care work in the home and the central dignity and humanity of caring for others.

International labour standards support this approach. The ILO's CEACR has consistently interpreted international labour standards—fundamental and other—in an expansive manner that moves beyond the nominal, hollow, inclusion of domestic workers in legislation. Governments are responsible for ensuring that domestic workers enjoy effective protection against employment discrimination, inequitable remuneration, including meaningful access in practice to enforcement mechanisms.[82] Yet it is decidedly unfashionable in the contemporary social regulation-shy era to promote the regulatory inclusion of a pre-industrial remnant into a contemporary regulatory frame. The risk might be that the Fordist, Taylorist scientific management practices glorified for the factory are merely transposed into the home.[83]

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even worse, violently treated or sexually abused" (Council of Europe, P.A., 2004 Ordinary Sess. (Second Part) *Domestic Slavery, Servitude, au pairs and 'mail-order brides,'* Doc. 10144 (2004), vol. 2, at 267). Its Parliamentary Assembly adopted *Recommendation 1663* calling for guidelines and recommendations identifying the "the distinctive status of au pairs (neither students nor workers) is recognized and safeguarded" but calling for their working conditions and social coverage to be "fixed" with appropriate regulation of the au pair industry, nationally and internationally, and the development of a government accreditation scheme. Council of Europe, P.A., *Recommendation 1663* (2004), "Domestic Slavery, Servitude, au pairs and 'mail-order brides,'" Council of Europe, <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/EREC1663.htm>. The Committee of Ministers of the Council of Europe followed up with its own recommendation dated 17 January 2005, which indicated other action under way, including to combat trafficking. See also Anderson, *supra* note 9 at 252 (noting the coding of "au pairs" as white, and the problems that have arisen in placing black au pairs from France, as well as resistance from white au pairs to work with black families).

80. ILO, *Decent Work for Domestic Workers, supra* note 1 at 14, para. 54.

81. ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, *supra* note 70 at 226 (Lebanon) (addressing allegations of widespread forced labour of migrant domestic workers from Africa and Asia, in the form of non-payment of wages, physical and sexual abuse, and sequestration).

82. See, for example, CEACR, *Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) United Arab Emirates* (ratification: 2001) (submitted: 2010), ILO (in which the CEACR noted the government's statement that a special unit had been created to supervise complaints by migrant domestic workers, but requested information on its functioning in practice including the number and nature of complaints and the outcomes).

83. Magnus, Part II, *supra* note 20 at 363 (suggesting that "the absence of any regulation of hours in domestic service also appears to be largely due to a lack of organisation and planning in household management. In industrial undertakings, rationalisation has always gone hand in hand with a reduction in the working hours of labour, while in unrationalised undertakings—for instance, among artisans—the regulation of hours is also less effective").

An implicit affirmation of the law and practice report, however, is that to rethink labour regulation to include domestic workers meaningfully is necessarily to re-imagine labour regulation beyond the industrial workplace model,[84] while retaining from modern employment law[85] that which distinguishes work from servitude.[86] It is subversive since it recognizes that the domestic work relationship contains the quintessential requirements of the standard employment relationship but is embodied in the quintessential "other." To infuse that "standard" domestic work relationship with labour rights, and to think closely about what that entails for working conditions, social protection, and collective rights, is to depart significantly from an outdated male breadwinner model and to embrace an inclusive vision of citizenship at work. This holds promise, both for rethinking the regulatory implications of the domestic work relationship and for more comprehensive contemporary regulatory rethinking.[87]

The challenge of legal form, tackled by the ILO in 2006 in Employment Relationship Recommendation no. 198, is highly present in domestic work and has in some jurisdictions become an important way for domestic workers to be subtracted from employment and social security protection through contractualization. Recommendation no. 198 seeks to combat "disguised employment relationships" and "ensur[e] standards applicable to all forms of contractual arrangements, including those involving multiple parties, so that employed workers have the protection they are due."[88] The law and practice report identified jurisdictions such as Switzerland (the Canton of Geneva) and South Africa, both of which have taken the policy decision to adopt "deeming legislation"

84. For an authoritative discussion of the standard employment relationship and regulatory alternatives, see Leah F. Vosko, *Managing the Margins: Gender, Citizenship, and the International Regulation of Precarious Employment* (Oxford: Oxford University Press, 2010).

85. See Simon Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment, and Legal Evolution* (Oxford: Oxford University Press, 2005) at 43-4 ("the transition to an industrial economy was indeed accompanied by a move to freedom of contract … alongside this process, a restrictive master and servant code, whose roots lay in the same pre-modern system of labour regulation, was also being extended and reinforced … employment could only be partially assimilated to the emerging contractual model … Conversely, the effect of the welfare state has not been to de-contractualize employment. Just the opposite: the modern, open-ended employment contract … could only have emerged against the backdrop of … the growth of regulatory employment legislation").

86. The importance of control over working time as an important marker between contemporary forms of servitude and "free" labour warrants further exploration. For an historical discussion, see Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2009) at 241-4.

87. See most notably the project that moves away from unification and instead towards "a large group or family of contracts, some of which fall into the subcategory of contracts of employment while others do not; bear in mind in this connection that the drawing of that line between contracts of employment and other personal work contracts is a notoriously difficult, and to my mind ultimately unsatisfactory pursuit." Set out by Mark Freedland, "From the Contract of Employment to the Personal Work Nexus" (2006) 35 Industrial Law Journal 1 at 7.

88. ILO, *Employment Relationship Recommendation*, 2006 (No. 198). The sub-category matters of course, and the tendency of home cleaning to be undertaken under a variety of contractual forms was noted in the report.

extending employment and social security coverage to all who undertake domestic work, whether they fit the contingent characterization of "employee."[89]

In "Regulating Migrant Domestic Work in the Netherlands: Opportunities and Pitfalls," Sarah van Walsum notes a shift in discourse away from assuming that women who provide domestic work do so for "pin money" as their male-breadwinner husbands support them and away from a logic emphasizing the personal, intimate nature of the services. Replacing it is a discourse of entrepreneurship, in which "[h]ousehold services are presented as a growing market, requiring little or no capital investment, which is an ideal opportunity for people with little means but who are eager to take on the challenge of free enterprise."[90] van Walsum chronicles the use of incentives ("cash in lieu of care in kind"[91]) in the subsidized sectors to the elderly and disabled, which has facilitated the exclusion of the workers who perform the labour from normally available employment and social security benefits.

Van Walsum's article captures the racialized demographic shift intertwined with the gendered exclusion in domestic work. She notes that most domestic workers in the Netherlands are of Dutch ethnic origin, working in the state-subsidized provision of care, but that the non-subsidized household services sector thrives alongside. This work is undeclared, almost entirely provided by migrants, and many of the migrants are themselves undocumented. Moreover, the decentralizing shift to cash in lieu of care in kind has opened a door for the recruitment of mainly ethnic minorities (mostly women, but some men) via commercial cleaning companies. van Walsum also notes pressure—resisted—placed on ethnic minority housewives by Dutch municipalities to take up paid domestic work. Van Walsum cites the many structural barriers—including failure to recognize foreign diplomas, language,

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89. See South Africa, *supra* note 39, providing as follows:
    1. The determination applies to the employment of all domestic workers in the Republic of South Africa including domestic workers –
        (a) employed or supplied by employment services;
        (b) employed as independent contractors.
    2. This determination does not apply to domestic workers –
        (a) employed on farms on which employees performing agricultural work are employed;
        (b) covered by another sectoral determination in terms of the Basic Conditions of Employment Act; or
        (c) covered by an agreement of a bargaining council in terms of the Labour Relations Act, 1995.

    Switzerland (Canton of Geneva): Contrat-type de travail pour les travailleurs de l'économie domestique à temps complet et à temps partiel (CTT-TED), J 1 50.03, 30 March 2004, Articles 1 and 2, Canton of Geneva, <http://www.ge.ch/legislation/rsg/f/rsg_j1_50p03.html>. It applies both to full time and part time workers, but includes a number of exclusions, notably *au pairs*. It should be noted, however, that the recently proclaimed federal ordinance with residual jurisdiction, has a crucial difference from that of the Canton of Geneva: workers who are "active" only for five hours with the same employer are excluded. See Switzerland, *supra* note 53, Article 2.
90. Van Walsum, *supra* note 4.
91. *Ibid*.

more restrictive migration policies, and generalized expressions of racism—make domestic work one of the only remaining survival strategies. On the basis of her interviews with undocumented migrant workers from Ghana and the Philippines, van Walsum uncovers hierarchies of racialized preference in the service sector that structure the workers' bargaining power. She engages with Mary Romero's classic study emphasizing some domestic workers' own decision to restructure their work away from waged labour into a small business,[92] highlighting the impact of exclusion from labour protection and social benefits for women who may not have a spouse in the formal economy, who may be at a stage in their life where they face heightened susceptibility to physical strain and are increasingly concerned about social security entitlements such as retirement pensions and who are not citizens of the country in which they work. She redirects attention to those workers involved in restructuring their work relationship—not away from an employment relationship but towards it.[93] She acknowledges the urgency of regularization for undocumented domestic workers and assesses the pitfalls and promises of a pilot project on temporary migration that is not conditional upon the Dutch labour market (so-called "circular migration") and proposed immigration reforms that might open the door further to accelerated procedures for "privileged sponsors" of non-EU migrants, including licensed companies. By integrating a close discussion of restructuring of migrant domestic work and transnational care commitments into the debate over contractualization and precarious work, Van Walsum valuably frames the challenge to "validate care in economic terms, to respect workers' autonomy as well as their rights to protection and social security, and to invent ways to redistribute social risks and responsibilities equitably, not just on a national, but also on a global, scale."[94]

Part of the informality associated with domestic work flows from the pluralism of norms that characterize the home workplace,[95] which has been, to some extent, employed historically in employment law through the notion that has acquired formal legal recognition in traditional contract doctrine as custom[96] and in a contemporary context through research methodologies that privilege listening closely

92. See Romero, *supra* note 15.
93. Van Walsum, *supra* note 4.
94. *Ibid*.
95. See, for example, Elizabeth Hill, *Worker Identity, Agency and Economic Development: Women's Empowerment in the Indian Informal Economy* (London: Routledge, 2010) at 70 (including the "inter-personal level of women's work-life experience" in accounts of structural informality defining their employment).
96. It is beyond the scope of this introduction to explore the usage of custom in legal decision making in employment law. However, it is worth noting some of the historical examples, which speak to the importance of this frame for understanding the law on the ground in judicial decision making on domestic workers. For example, Magnus notes the practice prevalent in the 1920s and 1930s of inspecting a domestic workers' personal belongings on termination, before she leaves her place of employment. The practice was legally sanctioned in some jurisdictions subject to "valid reason." Magnus, Part I, *supra* note 20 at 204 (Yugoslavia and Hungary). In others, however, it was considered to be an "arbitrary practice no longer justified by custom" *(ibid.)* (France).

to domestic workers' own assessments of their experiences, exercises of resistance and agency, and articulations of regulatory and broader social aspirations.[97] It is a close, critical look at the gap between law on the books and law on the ground,[98] which is essential to understanding much of the *de facto* labour market informality that characterizes domestic work despite *de jure* inclusion of domestic workers in labour laws that do not specifically apply to domestic workers and that are not actually enforced.[99] This leads to greater insights into the nature of the prevailing labour market informality in domestic work and regulatory options. As the law and practice report is careful to add:

> This is not to imply that their working lives necessarily lack structure and regulatory control. On the contrary, their lives and work are regulated by strong non-state norms regarding work in the employer's household, which vary significantly from one cultural context to the next but which result in domestic workers being among the most marginalized workers—and for whom decent work is often a distant aspiration.[100]

The report insists that "[m]ere tinkering with informal rules in formal legislation is not enough" and recognizing the precariousness of legislative gains for domestic workers, calls for a mix of measures that would include "capacity building for domestic workers, implementation incentives for employers and robust enforcement by governments."[101]

Martha Alter Chen's contribution to this special issue, entitled "Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges" acknowledges that measurement challenges are central even to identifying whether domestic workers in a given context can even be considered to be in the informal economy. Chen offers a typology to address the specificity and the heterogeneity of domestic work, which characterizes not only the workers but also their employers. Chen reviews the four dominant schools that have emerged on informality: dualist, structuralist, legalist, and voluntarist. She illustrates that conceptually there is a "'mismatch' between the reality of domestic work and the causal theories of informality," for at least three reasons.[102] First, all but the structuralists focus on the self-employed, so wage workers such as domestic

97. See, for example, Silvera, *supra* note 15; Thornton Dill, *supra* note 15; Parreñas, *supra* note 9; Hill, *supra* note 15; Hondagneu-Sotelo, *supra* note 15; and a number of contributions in this special issue.
98. Hondagneu-Sotelo, *supra* note 15, tackles this dichotomy with particular acuity.
99. See ILO, *Decent Work for Domestic Workers, supra* note 1 at 11-12.
100. *Ibid.* at 11. See also Basudeb Guha-Khasnobis, Ravi Kanbur, and Elinor Ostrom, "Beyond Formality and Informality," in Basudeb Guha-Khasnobis, Ravi Kanbur, and Elinor Ostrom, eds., *Linking the Formal and Informal Economy: Concepts and Policies* (Oxford: Oxford University Press, 2007) 1 at 4.
101. ILO, *Decent Work for Domestic Workers, supra* note 1 at 11.
102. Martha Alter Chen, "Recognizing Domestic Workers, Regulating Domestic Work: Conceptual, Measurement, and Regulatory Challenges" [in this volume].

workers tend to be excluded. Second, structuralists allow for subordination but deal uneasily with employers who are more likely to be households that span the socio-economic gamut and in many parts of the world are not easily subsumed under the label of "capitalists." Third, non-compliance or tax avoidance by domestic workers and their employers is likely to be more complex than voluntarists suggest. The discourse surrounding illegality sits uneasily alongside the generally legal provision of domestic services. Chen argues that at issue is compliance and enforcement of labour standards in the household and the surrounding uncertainty on the part of the worker and, to some extent, the employer. Insisting that labour market "formalization is not a one-time process" but, rather, gradual and incremental, she also reaffirms the findings of the law and practice report that a "spectrum of laws" beyond strictly defined labour regulation may become important and that broader structural issues will need to be addressed.[103]

As Chen indicates, understanding the employer is an important dimension to dealing with labour market informality. The literature on domestic employers is understandably sensitive to the coercion that the inequitable power relationship facilitates, however individually well intentioned a particular employer may be. The move to an employment law framework entails grappling with a somewhat different logic, which acknowledges oppression but engages with regulation that combines scrutiny and sanction for breach with the interplay of constructing societal acceptance and engaging actors' good faith to arrive at regulation that yields compliance. While labour lawyers committed to social transformation inevitably recognize the structural limits of non-state forms of labour legality, they nonetheless acknowledge the indeterminate but important process of identifying parties' interests, legitimate expectations, and rights. The aspiration is substantive equality, which entails dislodging (some of) the employer's asymmetrical power and privilege. According to the law and practice report, a labour regulatory framework based on decent work

> signals a transition from the paternalistic conception of the "good employer," acting out of a sense of *noblesse* oblige, to one that is founded on respect for domestic workers' labour rights. This trajectory is so familiar that it hardly needs to be emphasized here, were it not that vestiges of the traditional approach to domestic work remain so troublingly present.[104]

The report places attention not only on extreme cases of abuse but also on the implications of state failures to regulate domestic employment relations sensibly on the decision making of ordinary employers. Rather than constructing the all too prevalent but worst case scenario employer as the norm, in regulating domestic work like other forms of employment, it seemed important also to have in mind the conscientious, invariably conflicted progressively inclined professional woman with family

103. *Ibid.*
104. ILO, *Decent Work for Domestic Workers, supra* note 1 at 13.

responsibilities that might or might not be shared by an equality-seeking spouse.[105] The report states the following:

> [T]he relationship between employers and domestic workers is fraught with ambiguity that combines stark social differences and close physical proximity. In the absence of adequate specific regulation, employers of domestic workers are thrust into the role of establishing the "law" that governs the work done in their home, at best in the shadow of national legislation. Moreover, employers are likely to have to assume responsibility for any work that domestic workers cannot or do not complete, and in a sense this places them in an inherently conflictual position vis-à-vis their employee. In other words, although domestic work may entail a multiplicity of household tasks or expectations, if a domestic worker does not do the work a member of the household must.[106]

The report does not seek to overcome the unease, calling for progressive positionality in the face of the construction and entrenchment of societal marginalization. Nor could the report explore the non-state, informal, but potentially more constraining norms associated with domestic work that regulate it asymmetrically in favour of the employers' ultimate desiderata. The absence of meaningfully enforced labour legislation implies that domestic workers remain dependent on any particular individual employer's sense of fairness rather than a commonly established legal norm valuing the worker's societal contributions and her inherent human dignity. Part of the contention is that a labour regulatory framework in which domestic workers have participated, that promotes decent work may provide for conscientious employers a benchmark against which to assess the "justice" of employment terms. The report therefore affirms that employers should not be "thrust into the role of establishing the 'law' that governs the work done in their home, at best in the shadow of national law." It looks at the panoply of regulatory forms and highlights strategies that are "simple, supportive and smart."[107]

An increasingly prevalent example of legal simplification highlighted in the reports are measures that facilitate the often complex calculation and deduction of mandatory employment deductions. The measures may be accompanied by fiscal

105. I have been both moved and troubled by the angst expressed in a number of the contributions by feminist and critical race scholars in law reviews, agonizing over the inherently problematic choices they have personally had to make as women and members of historically marginalized communities whose mothers may have been domestic workers, and now as academics, they find themselves in the role of employers. See also Hondagneu-Sotelo, *supra* note 15, for a close study of employer attitudes, and a theorization of the distinction between "maternalism" and "humanism."

106. ILO, *Decent Work for Domestic Workers, supra* note 1 at 13, para. 48.

107. *Ibid*. at 95. The impact of these kinds of initiatives on the prevalence of payment in kind—a practice that the *Decent Work for Domestic Workers* argued should be significantly circumscribed—warrants more attention.

incentives. Depending on their design, they may "facilitate the transition from the informal to the formal economy, in part by reducing the transaction costs for employers and employees."[108] They may also be important ways to ensure the delivery of social protection to workers who have traditionally remained excluded or inequitable.[109] Retirement pensions have posed a particular challenge to workers who may have lived in relative isolation in their employer's household without children or extended family upon whom they can count for support and who are excluded from state structured retirement benefits.[110] The disparate impact on women from racialized communities may also have been historically understated.[111] Yet there is some consternation over whether the design of existing simplified mechanisms fosters or compounds labour market precariousness and whether their promotion signals a retreat of the state from the provision of care services.

Manuela Tomei in "Decent Work for Domestic Workers: Reflections on Recent Approaches to Tackle Informality" reviews the literature on simplification schemes put in place in four jurisdictions: Belgium, Brazil, France, and the Canton of Geneva in Switzerland. Tomei notes that the public policy objectives vary in the respective jurisdictions, with Belgium and France inserting the measures into European Union-level job promotion employment strategies in which personal care services have been the source of increased attention. In the Canton of Geneva, in a nation state that has not traditionally fostered permanent immigration, the focus has not been job creation. Rather, the primary concern for this workforce with often irregular status has been to increase social security contributions. The Brazilian experience is analyzed separately, as a multi-pronged approach including constitutional reform, accompanying recent government initiatives to recognize the significant contributions of domestic workers—the majority of whom are of African

108. *Ibid*. at 42.

109. Custom and usage have historically governed employers' responsibility to care for domestic workers in countries such as Great Britain, France, and Sweden, although some of the old master and servant laws and the civil codes of Germany and Switzerland explicitly recognized the employers' liability. Magnus, Part I, *supra* note 20 at 205; Magnus, Part II, *supra* note 20 at 342. In some cases, employers were required to provide medical care during sickness and sometimes explicitly prohibited the sick domestic worker from being removed from the employer's household if her condition might be aggravated. Magnus understood this liability as a counterbalance for "the employer's right to make practically unrestricted demands on his servants' labour" (at 342). However, an important transition occurred between the "special liabilities" that were prescribed either under special laws applicable to domestic workers or laws of general application to the development of social insurance systems that in some countries slowly started to include domestic workers for selected branches of insurance.

110. See Magnus, Part II, *supra* note 20 at 342-7 (noting that domestic workers were most often included in compulsory sickness and maternity insurance, but were prone to be excluded from retirement benefits and accident insurance—sometimes by mere legislative exclusion, other times structurally because they were not organized into trade unions that organize fund membership).

111. See, for example, Erna Magnus, "Negro Domestic Workers in Private Homes in Baltimore" (1941) 4(10) Social Security Bulletin 10 at 14 (finding that of a sample of 508 married, mainly African American, women in domestic work, only 178 of their husbands had insurance).

descent—to Brazilian society. The precise character of the incentives in each country varies, as have employment creation effects, despite increases in registration in jurisdictions such as the Canton of Geneva. Yet it is in the regulatory design that the impact on the quality of employment is most readily assessed, as well as the tendency of mechanisms designed as in France to facilitate social security payments for those who work for multiple employers to reproduce short-term, precarious forms of employment.[112] Although beyond the focus of Tomei's assessment, the extent to which measures of this nature may have accompanied the privatization of care services previously provided by the state also warrants further exploration.[113] Tomei does, however, call into question the existence of differential conditions of work and quality of service that have been observed as between services provided in the public service sector and for-profit enterprises, notably temporary employment agencies.

An element in the formalization debate surrounding domestic work involves understanding and rethinking the role of employment agencies, including placement agencies. This regulatory entry point was understood by researchers considering the challenge even in the 1920s and 1930s,[114] when the dominant activity fee-charging private employment agencies in many European countries was the placement of domestic workers.[115] The earliest—and now shelved—regulation of this sector was the ILO *Fee-Charging Employment Agencies Convention*, 1933 (No. 134) which called for the abolition of private, for profit fee-charging agencies in the hope that an "efficient system of public exchanges" would develop instead to establish conditions of employment for domestic workers who constituted half to two thirds of the workers placed.[116] The current position of the ILO is to permit private agencies but ensure safeguards. ILO *Private Employment Agencies Convention*, 1997 (No. 181) does not refer to domestic workers directly but calls for measures to prevent the abuse of migrant workers by agencies and prohibits fraudulent and abusive practices. Subject to some exceptions in Article 7(2) to

112. See also Anne Trebilcock, "Commercialization and Informalization of Work: Developments in Germany" (Paper presented at Onati Institue for Sociolegal Studies "Blurring Legal Boundaries: Commercialization and Informalization of Work," Onati, Spain, 1–2 July 2010) [unpublished] [cited with permission; copy on file with the author] (discussing similar mechanisms in Germany).

113. This concern has been raised in relation to initiatives of more limited extent undertaken in Quebec, in relation to the social economy enterprises, and a service cheque system available to seniors and the disabled who require home support services such as housekeeping or gardening and snow removal, and was referenced in the ILO, *Decent Work for Domestic Workers, supra* note 1 at 42.

114. Magnus, Part II, *supra* note 20 at 347 (arguing that arguments linked to domestic workers' isolation, given to justify excluding domestic workers from unemployment insurance, could most likely be "overcome fairly simply by bringing together the placing and the supervision of unemployed domestic workers within the framework of the public employment exchange system, as has been done for other groups").

115. See ILO, Abolition of Fee-Charging Employment Agencies, ILC, 16th Session, Geneva, 1932.

116. See Magnus, Part II, *supra* note 20 at 350-1.

which ILO notification requirements apply, Article 7(1) of Convention No. 181 prohibits private employment agencies from charging fees or costs to workers, directly or indirectly. This is consistent with Articles 8 and 9 of the ILO *Protection of Wages Convention*, 1949 (No. 95), which permits deductions from wages, but "only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award," while prohibiting deductions from wages to secure employment through an intermediary.

The law and practice report briefly addresses the challenge of employment agencies, which may serve only an initial placement function or stay actively involved throughout the employment relationship. It not only hints at the debate in the literature over whether there is regulatory promise in formal domestic work relationships but also notes the extent of the structural diversity in agencies. The risk that abuse might be compounded, particularly in the context of migration, is significant. The report stresses the role that national policies may play in licensing and monitoring agencies. Although all strategies yield a level of ambivalence in the face of the magnitude of the reported abuses, the report identifies dedicated departure policies, bilateral arrangements, and measures by recipient countries that might limit abuse.[117] The report also identifies comparable initiatives by domestic workers to take control of structuring their own working time, breaking their isolation, and reinforcing solidarity through cooperatives, particularly in the provision of home-cleaning services. Cooperatives are the subject of the ILO's *Promotion of Cooperatives Recommendation*, 2002 (No. 193) and has been the subject of experimentation, notably in the United States and in India.[118]

Two contributions to this special issue relate specifically to this regulatory challenge. Dzodzi Tsikata, in her article entitled "Employment Agencies and the Regulation of Domestic Workers in Ghana: Institutionalizing Informality?" examines the significant development since the 1990s of domestic employment agencies, which were legalized in that country in 2003. She notes the wide variety of "informally mediated recruitment arrangements, including those that might link rural and urban family members."[119] She suggests that informal agents may operate on a different legal basis but function in a similar manner. On the basis of two contrasting case studies, Tsikata takes issue with the "modernist notion that formal and more structured relations can eliminate some of the exploitative elements of domestic work"[120] but suggests that the experience in Ghana cannot either be held to assert that private arrangements are superior to agencies.[121] Tsikata discusses a

117. ILO, *Decent Work for Domestic Workers, supra* note 1 at 70.
118. *Ibid.* at 85-6. Neetha and Palriwala's discussion, *supra* note 60 at 14, offers a valuable complement, by considering the role that trade unions such as the Self Employed Women's Association and other civil society structures might play.
119. Dzodzi Tsikata, "Employment Agencies and the Regulation of Domestic Workers in Ghana: Institutionalizing Informality?" [in this volume].
120. *Ibid.*
121. *Ibid.*

number of standardizing, bureaucratizing effects of agencies, which may range from the clarity-enhancing function of instituting a formal contract specifying terms and duties to discriminatory practices such as accommodating employers who express a preference for workers of a particular ethnicity. She also assesses the implications of the fact that the majority of agencies recruiting domestic workers are registered, limited liability corporations, but are not licensed under the *Labour Code*. She is concerned about the implications of "informality at the base of the recruitment"[122] in more formal arrangements, arguing that "[f]ormality and informality are more of a continuum than at opposite ends of the scale."[123]

The second contribution, by Judy Fudge, entitled "Global Care Chains, Employment Agencies, and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada" sheds a spotlight on agencies that recruit and place domestic workers across national boundaries, while offering a helpful overview of the Live-in Caregiver Program in Canada. For Fudge, they are "crucial actors in the construction, maintenance, and reproduction of global care chains, in which women from the South migrate to the North in order to provide domestic work."[124] Taking the law and practice report as a point of departure, Fudge draws on the overlapping mechanisms in transnational labour law to argue that "it is possible and desirable to harness multiple jurisdictions in order to provide decent work for migrant domestic workers."[125] She identifies the diversity of agents involved in providing "care" along global care chains and structures her account to link the Philippines Overseas Employment Administration and employment agencies that operate in both sending and receiving countries. She is careful to capture that the growth in private fee-charging employment agencies operating transnationally, and their corresponding efforts to legitimate their role and dispel their negative image, is correlated with a decline in the role of public employment services. She points out that the memorandum of understanding (MOU) between the Philippines and British Columbia excludes live-in caregivers, an exclusion noted in the law and practice report for a number of MOUs with other jurisdictions. She also addresses the internal regulatory landscape in Canada seeking to address reports of unethical and illegal practices in immigration consultancy, noting that despite the establishment of a voluntary organization, the Canadian Society of Immigration Consultants, allegations of widespread fraud have persisted. Most tellingly, in her discussion of the case law that addresses the regulation of agencies in British Columbia, Fudge illustrates how the agencies might circumvent restrictions on charging fees to domestic workers by simply recharacterizing them to fit existing legislative exemptions.[126] She offers a number of practical reform

122. *Ibid.*
123. *Ibid.*
124. Judy Fudge, "Global Care Chains, Employment Agencies, and the Conundrum of Jurisdiction: Decent Work for Domestic Workers in Canada" [in this volume].
125. *Ibid.*
126. *Ibid.*

suggestions, including one that is explored in international standard setting—namely that of joint and several liability for fees charged by agencies to migrant workers.

Migration, Forced Labour Conditions, and Respect for Domestic Workers' Agency

The incidence of forced labour and abuse in domestic work is too prevalent to be swept aside in discussions that characterize migration as a matter of rights and agency only. The scholarly literature abounds on this topic,[127] and a review of the ILO's CEACR reports has an equally disabusing effect, leading some scholars and activists to reassert the parallels between some domestic work practices and modern day slavery.[128] The language of "abolitionism" may even be invoked to call attention to the ethical implications of failing to address the urgent decent work deficit in domestic work.[129] Resistance to the infantilization of adult

127. A few core examples in addition to the literature already cited include Leah Briones, *Empowering Migrant Women: Why Agency and Rights Are Not Enough* (Surrey: Ashgate, 2009) (calling for a thick approach to capabilities); Encarnación Gutiérrez-Rodríguez, *Migration, Domestic Work and Affect: A Decolonial Approach on Value and the Feminization of Labor* (New York: Routledge, 2010) (insisting on the affective dimensions of migration policies); Lutz, *supra* note 11; Sarah van Walsum and Thomas Spijkerboer, eds., *Women and Immigration Law: New Variations on Classical Feminist Themes* (New York: Routledge-Cavendish, 2007); Elisabetta Zontini, *Transnational Families, Migration and Gender: Moroccan and Filipino Women in Bologna and Barcelona* (New York: Berghahn Books, 2010). The Council of Europe has also addressed the matter, notably in the key case entitled *Siliadin v. France* No. 73316/01, E.C.H.R. 2005, 45 I.L.M. 962 (2006), and in two key recommendations: *Recommendation 1523(2001) on Domestic Slavery*, and *Recommendation 1663 on Domestic Slavery*, *supra* note 79: servitude, au pairs and mail-order brides, which calls among other matters, for the prioritization of the elaboration of a charter of rights for domestic workers, as well as an accreditation system for agencies placing domestic workers. There remains, however, a troubling tendency to understand the contemporary experience of slavery as brought to Europe by the "exotic" less "civilized" other, rather than more broadly rooted in socially inequitable relations. However, see, for example, United Nations Commission on Human Rights, *Report of the Working Group on Contemporary Forms of Slavery*, Geneva, Doc. E/CN.4/Sub.2/2001/30 (2001) (reporting the case of domestic workers recruited to the United Kingdom under false promises of working as nurses).

128. The United Nations Human Rights Council has also reported on the slave-like conditions prevailing in the domestic work sector, although the report tellingly struggles to elucidate a meaningful characterization of domestic work that is not fundamentally exploitative. See *Report of the Special Rapporteur on Contemporary Forms of Slavery, including Its Causes and Consequences*, *Gulnara Shahinian*, UN Human Rights Council, 15th Sess., UN Doc. A/HRC/15/20 (2010), Office of the United Nations High Commissioner on Human Rights, <http://www2.ohchr.org/english/issues/slavery/rapporteur/index.htm>. Over the past number of decades, even governments from different labour-sending countries have instituted full or partial bans on the migration of domestic workers to certain countries, given the tremendous risk to health and security of the person.

129. See Adelle Blackett, "Promoting Domestic Workers' Human Dignity through Specific Regulation," in Antoinette Fauve-Chamoux, ed., *Domestic Service and the Formation of European Identity: Understanding the Globalization of Domestic Work, 16th–21st Centuries* (Bern: Peter Lang, 2004), 247 at 248. In raising the ethical argument, I acknowledge the practical limits but consider that communities of current and former domestic workers should

women domestic workers[130] as well as to the tendency to situate structural disenfranchising within the discourse of "vulnerable" workers are hallmarks of feminist writing on this topic.[131] While affirming domestic workers' exercise of agency in taking difficult life decisions, scholarship insists upon the constructed abuse, which may confine domestic workers to an existence of "perpetual foreigners."[132]

Chapter 6 on combating the forced labour dimensions of migrant domestic work in the law and practice report therefore emphasizes the regulatory role of the state in the construction of vulnerability and the ways in which state normative action might make the work less precarious. For example, contrasting judicial decisions on the legality/illegality of migrant domestic workers were crucial to establishing how states may foster, perpetuate, or resist the exploitation of migrant domestic

be the ones to decide whether a program is challenged or not. This kind of deliberation is underway among communities of domestic workers in Canada, and those affiliated with the Philippine Women's Association of Canada have increasingly called for a direct challenge to the constitutionality of Canada's migrant domestic worker scheme. I therefore respectfully disagree with the contention in Mundlak and Shamir that the "abolitionist" approach reflects a form of commodification anxiety. See Guy Mundlak and Hila Shamir, "Bringing Together or Drifting Apart? Targeting Care Work as 'Work Like No Other'" [in this issue].

130. The prevalence of children and in particular girls in domestic work is a serious and important topic, too often trivialized as a harmless home education opportunity for children but increasingly recognized as potentially constituting one of the worst forms of child labour that may interfere with children's development and educational opportunities, as in the CEACR's discussion of the ILO's work through its International Programme on the Elimination of Child Labour and its general observation on the application of ILO *Minimum Age Convention*, 1973 (No. 138), which notes that "the application of the Convention continues to frequently give rise to serious difficulties in practice … even in countries which have had recourse to the technical assistance of the ILO to resolve the problem of child labour, thousands of young children continue to work, particularly in the informal economy and in … domestic work" *Report of the Committee of Experts*, 2004, at 177. The prevalence of child labour in domestic work is hardly an issue particular to contemporary times (see, for example, Magnus, Part I, *supra* note 20 at 200 (discussing the *mui-tsai* system in various parts of East Asia in the 1920s and 1930s, in which extreme poverty led parents to surrender their rights and support obligations *vis-à-vis* a daughter in exchange for a cash payment, and chronicling fraught and resisted colonial measures by the British government to render the practice illegal in its colonial territories). The ILO has an existing standards framework and action program on child labour that has increasingly focused attention on child domestic workers. The law and practice report focuses instead on adults in domestic work and emphasizes the regulatory implications of addressing domestic work within a labour regulatory framework. Yet it is worth considering the discussions in the first session of the ILC, which reflect conflicting, deeply held views about child labour in society, as well as the complexity of regulating forms of child labour in a manner that is alive to social development.

131. Vulnerability is constructed and structured by regulatory frameworks. See, for example, Adelle Blackett and Dzodzi Tsikata, "Vulnerable Workers," in Frédéric Mégret et al, "Dignity: A Special Focus on Vulnerable Groups," Swiss Initiative to Commemmorate the 60th Anniversary of the Universal Declaration on Human Rights, June 2009, at 59–69, Anniversary of the Universal Declaration of Human Rights, <http://www.udhr60.ch/report/HumanDignity_Megret0609.pdf > .

132. Rhacel Salazar Parreñas, "Perpetually Foreign: Filipina Migrant Domestic Workers in Rome," in Lutz, *supra* note 11 at 99.

workers.[133] The report also stresses the impact of the loss of resident status and termination of employment under labour migration schemes in a number of ILO member states, pointing out the inconsistency with the ILO's *Migrant Workers Convention*, 1975 (No. 143) (Supplementary Provisions). It calls into question the automatic live-in requirement, arguing that "making the issue of a work permit conditional on such a requirement is a practice that can open the door to forced labour."[134] And it touches upon the sensitive but crucial issue of the responsibility of international organizations and diplomats themselves.[135]

Nisha Varia's essay entitled "'Sweeping Changes?' A Review of Recent Reforms on Protections for Migrant Domestic Workers in Asia and the Middle East" identifies some of the most egregious, systemic human rights abuses in migrant domestic work that are tolerated or even enabled by a combination of "the significant gaps in labour laws, restrictive immigration policies, and socially accepted discrimination against an often darker-skinned 'servant' class." The women she surveyed through her extensive field work as an activist for Human Rights Watch hail from Indonesia, Sri Lanka, the Philippines, Ethiopia, Nepal, India, and Bangladesh. In this article, Varia focuses on migration destinations in Asia and the Middle East, although Human Rights Watch's chronicling of abuse crisscrosses the globe. Varia's article emphasizes patterns of change, however, focusing on measures to regulate labour conditions, immigration regulations, and civil society mobilization. First, on labour conditions, Varia is wary of a tendency to promote standard form contracts or bilateral agreements in the place of labour law reform. Varia seeks to overcome deeply rooted social norms that yield resistance to equality of treatment for domestic workers and call upon the state to assume responsibility for regulating labour conditions in a specific, detailed manner and for ensuring that they are enforced. Second, on immigration regulations, Varia identifies governmental attempts to move beyond the sponsorship system, which essentially binds migrant domestic workers to their employers while comforting stereotypical assumptions that are used to justify confining domestic workers to the employer's home. Rather than "protect" the domestic worker, the practices significantly increase the risks of "domestic abuse." Yet alternative proposals—some of which might themselves be troubled—have in any event languished. Third, Varia chronicles civil society mobilizations, noting the fast growth of links between domestic workers' rights groups and trade unions. As in the law and practice report, however, when much of the civil society focus is on the provision of emergency services such

133. The report cited *Discovery Health Ltd. v. Commission for Conciliation, Mediation and Arbitration*, [2008] ZALC 24 (S. Afr. Labour Ct.) (Van Niekerk A.J.) (interpreting immigration legislation such that fundamental rights and fair labour practices are upheld for undocumented migrant workers).

134. ILO, *Decent Work for Domestic Workers, supra* note 1 at 69. It is noteworthy that some jurisdictions are rethinking this regulatory approach.

135. *Ibid.* at 70.

as ensuring that domestic workers can reach short message service hotlines if they are locked in their workplaces or that they have access to safe houses to which they can turn when they are in danger in their employer's household, the gravity of the remittance-induced thrust to send forth women is put into stark relief.[136] Moreover, remittance-driven migration for development may place migrant domestic workers in deeply precarious situations in times of financial crisis, and its contribution to social development is deeply contested.[137]

Specific Regulation, Working Hours, and Autonomy

The law and practice report discusses the perceived "boundarilessness" of time that characterizes domestic work, particularly when domestic workers are required to "live in."[138] The report focuses on regulating domestic worker's time, not through Taylorist scientific management principles but, rather, through challenges to the "common sense" of care work by insisting on boundaries, claiming the time, and the work place, for labour law. Again, the sectoral approach—drawing on the experiences of firefighters and ambulance workers, medical interns, nurses, road and maritime transport industry workers—provides specific guidance on how to think about and regulate issues such as overtime and on-call or standby work.

Guy Mundlak and Hila Shamir, in their article entitled "Bringing Together or Drifting Apart? Targeting Care Work as 'Work Like No Other,'" relate the "idiosyncratic" nature of a series of decisions from Israel on whether live-in domestic workers were entitled to overtime compensation, beyond the statutory minimum wage.[139] The standard applicable to most workers is the relatively straightforward principle that every hour of work beyond the eight-hour day should be subject to overtime compensation. At issue was an exception in the law for employees whose employment "conditions and circumstances" render it "impossible" for the employer to control their working hours and hours of rest. Mundlak and Shamir

136. See Migration Policy Institute, *The Global Remittances Guide*, Migration Policy Institute, <http://www.migrationinformation.org/datahub/remittances.cfm>. See also Organisation for Economic Cooperation and Development (OECD), *Migration, Remittances and development* (Paris: OECD, 2005).

137. See, for example, Hein de Haas, "International Migration, Remittances and Development: Myths and Facts" (2005) 26 Third World Quarterly 1269 at 1275.

138. The conflict of interests is sometimes stated most starkly:

> We try not to give a day off because both of us are working. So we work sometimes five days a week, sometimes six days a week . . . If we give [our maid] a day off we can't even rest.

Human Rights Watch, *Costly Dreams: Abuse of Migrant Domestic Workers in Asia* (New York: Human Rights Watch, 2007) at 10.

139. Mundlak and Shamir, *supra* note 129.

characterize as representative of the "work like any other" approach, the strand of literature militating in favour of application of the overtime rules, all the while noting the jurisprudential variants of this approach in some of the cases. The "work like no other" approach is characterized as permitting the exception, as judges expressed sympathy for the difficulty faced by employers in keeping track of domestic workers' routine, and underscore the differences between employers of live-in care workers and commercial employers. Ultimately, decisions fall at different points along the spectrum of these two dichotomizations. However, the authors explore the implications of the High Court of Justice's seeming preference for a *sui generis* arrangement through which they appear to open the door to calling into question assumptions about equality of treatment.[140]

The authors contend that the debate in Israeli law "reflects an existing international debate over care (and domestic) work"[141] on whether "care workers [should] be entitled to standard employment protections, which are similarly enforced in relation to all workers."[142] Certainly, the standard setting at the ILO has a normative starting point, which is that domestic workers are entitled to fundamental principles and rights at work, including equality of treatment, and that international labour standards that do not exclude them apply to them.[143] The ILO supervisory bodies monitor exclusions closely, and the CEACR scrutinizes specific rules to ensure that they are equally robust and equality enhancing. The standard-setting initiative has therefore focused on specific regulation—for example, to challenge the requirement to live in, to address domestic workers' living conditions, and to establish limits on their perceived continuous "availability" for work. The authors are therefore correct to insist that attention to specificity should not lead to a form of exceptionality, and, as a result, that singling out domestic workers comes with some perils given the indeterminacy of law reform. Flowing through Mundlak and Shamir's article is the concern to raise hard questions to which regulating domestic work should be alive, including domestic workers' structural disadvantage, the impact of relative power on legislative decision making, and domestic workers' trade union organizing capacity. Indeed, how the ILO's focus on regulating decent work for domestic workers can influence

140. Interestingly, though, there would appear to be a move away from the language of "impossibility" found in the law to a concern over practicality or exceptionality as discussed by the authors.

141. Mundlak and Shamir, *supra* note 129. Mundlak and Shamir explain the classification difficulties in Israel that lead to a different if overlapping scope for "care workers" and "domestic workers." This introduction of their article has used the language of domestic worker, in keeping with the international standard setting.

142. *Ibid*.

143. ILO Constitution, Article 19(8), also provides that "[i]n no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation."

whether, how, and to what extent state regulators prioritize legislative improvements for domestic workers warrants ongoing analysis.[144]

Occupational Safety and Health, Inspection, and Enforcement

The law and practice report challenges the common assumption that domestic work is thought to be safe because it reflects typical household activities. The available data confirm the serious and statistically greater risks for domestic workers, compounded by their isolation, which prevents them from relying on the advice and assistance of their co-workers.[145] This same isolation heightens domestic workers' exposure to sexual, verbal, and physical harassment and abuse, leading a number of contributors to highlight the hazardous nature of domestic work. The report identifies a number of routine risk factors including the prolonged use of toxic cleaning products, significant exposure to dirt and dust, the stress and fatigue of long hours, and the effects of repetitious tasks.[146] Consider how historian Carolyn Steedman captures the relationship of domestic workers to the "things" they are required to do:

> If you are going to cook with them, a pound of carrots do indeed suggest and make the cook enact the next operation: they need to be topped and tailed peeled and sliced . . . But *six pounds* of carrots (soon to be amalgamated with the beef in the pot, and consumed by the company in the dining room)? Six pounds of carrots invite a different approach and relationship from the worker, as does the eighteenth part of processing one pin, repeated again and again; or the million brass valves produced during the course of a life . . . As one washerwoman of the Edwardian period remarked "Christ! . . . Wash, wash, wash; it's like washing your guts away. Stand, stand, stand; I want six pairs of feet; and then I'd have to stand on my head to give them a rest" . . . Without a late eighteenth-century vocabulary for saying this, we are left with a universe of material objects and entities pressing their needs, not upon their owners, but upon those whose energies and time had been purchased for their production, processing, maintenance and care. The servant's labour was work;

144. *Decent Work for Domestic Workers* identifies a number of examples of legislative reform in the shadow of the international standard-setting exercise. The impact of the CEACR's reports also warrants attention.

145. See, for example, Vilma S. Santana et al., "Emprego em serviços domésticos e acidentes de trabalho não fatais" (2003) 37 Saúde Pública 1; Chelsy A. Castro, "Dying to Work: OSHA's Exclusion of Health and Safety Standards for Domestic Workers" (2008) 4 Modern American 3; Peggie Smith, "The Pitfalls of Home: Protecting the Health and Safety of Paid Domestics" [in this issue], offers a fullsome review of the literature on occupational hazards in the United States.

146. See ILO, *Decent Work for Domestic Workers, supra* note 1 at 61-3.

> and work is—work. Hard, exhausting, what has to be done to get a living.[147]

The report emphasizes that "regulating occupational health and safety for domestic workers is impossible as long as the household is not recognized as a workplace" to which a regulatory framework promoting meaningful accident prevention could apply.[148] Drawing on Peggie Smith's earlier scholarship, it highlights the suggestion that pre-placement home inspection visits to identify occupational hazards that are likely to cause serious physical harm might be considered alongside a general obligation for employers to ensure the safety of their homes and foresaw the potential need for additional support measures, notably to the elderly or to disabled persons receiving home care services.[149] In the spirit of the specific regulation approach, Smith argues that "[i]nstead of compromising on health and safety when home care does not fit into the existing regulatory framework, policymakers must refashion the framework to address the occupation's unique concerns."[150]

In her contribution to the special issue entitled "The Pitfalls of Home: Protecting the Health and Safety of Paid Domestic Workers," Peggie Smith acknowledges the difficulty associated with regulating the home as a workplace, particularly when the home is not the worker's home. She notes the "unique obstacles" to improving domestic workers' health and safety.[151] Drawing on the experience in the United States, she finds that health and safety protection for domestic workers has largely "fallen through the cracks."[152] Smith's ideal situation would entail constituting employers into a collective or industry representational structure to facilitate dialogue.[153] However, in the US context, Smith notes that actors such as the Domestic Workers Union are at once lobbying for legislation and encouraging the use of standard contracts that clarify terms of employment that include provisions on safety and health. She discusses the proposed terms in detail, highlighting in the process the impact of the terms on the lived experience of domestic workers who

147. Steedman, *supra* note 50 at 351-2, and 354. Steedman is of course making a case for an approach that considers not just how "things" may have represented something else, but also a focus on "its thing-ness"—things that "made and remade social relationships in a daily basis, in courtrooms and kitchens, and in the moment snatched by the servant to *say* something about it all, by means of her pen" (*ibid.* at 354-5).
148. ILO, *Decent Work for Domestic Workers, supra* note 1 at 62.
149. *Ibid*. at 63; Peggie R. Smith, "Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century" (2007) 92 Iowa Law Review 1835 at 1897-8.
150. *Ibid*. at 1881.
151. Smith, *supra* note 149.
152. *Ibid*.
153. *Ibid*. at 19. It should be noted that this kind of representational structure exists in France, where up until recently the Fédération des particulier employeurs de France was the singular employer entity promoting the direct-employer relationship was considered representative. In 2010, the Syndicat du particulier employeur, affiliated to the main employers' federation in France, the MEDEF, received its representative status. Both are parties to the National Collective Agreement no. 3180 regulating a significant category of domestic workers ("employés du particulier employeur").

navigate the precariously thin line between the formal and informal economy, and the legal/"illegal" binary in migration that makes government detection or enforcement a further peril. She also identifies potential and risks in the cooperative structure and cites a few examples of housecleaning cooperatives that have been able to promote non-toxic, eco-friendly cleaning products or products based from traditional substances.

Smith calls for a comprehensive approach to inclusion, one that is attentive both to the specificity and to the heterogeneity of the domestic work relationship, identifying both the direct-hire contractual relationship (to which occupational safety and health legislation in principle does not apply) and the third party agency relationship (to which it does) as permitting distinct strategies. She further acknowledges the practical challenges associated with adopting occupational safety and health standards, calls for attention to the diversity of "clients," and shows particular sensitivity to the accessibility and affordability concerns faced in particular by the elderly and the disabled, for whom structural alterations to the household may become necessary for health and safety reasons. Smith considers that "[c]lients invariably forfeit a measure of autonomy, privacy, and control by the mere act of allowing home-care workers into their homes," and she argues that safety in the household benefits the care recipient as well as the worker.[154] She argues that pre-inspection visits can readily be tailored to meet domestic workers' safety needs, alongside those of the service recipient.

The discussion of occupational safety and health brings to the foreground the need to ensure that compliance and enforcement mechanisms are fully in place and adapted to the domestic work sector. The law and practice report notes that ILO supervisory bodies have stressed the importance of effective and accessible mechanisms to enforce domestic workers' rights. It canvasses some of the challenges of access to regular courts and specialized tribunals, highlighting the development in South Africa of a Commission for Conciliation, Mediation and Arbitration (CCMA), an institution designed through tripartite negotiation to provide the accessible, inexpensive, and non-technical resolution of most labour disputes and which is referred to by Paul Benjamin as "one of the most innovative examples of institutional design in the post-apartheid reconstruction of the South African state as well as internationally in the area of labour dispute resolution."[155] Under the supervision of the Labour Court and the Labour Appeal Court, the CCMA retains the power to order reinstatement, although the monetary

154. Smith, *supra* note 149. See also Delp and Quan, *supra* note 6 (illustrating how the Service Employees International Union worked in coalition with service recipients—seniors and disabled persons—once they were able to establish that better working conditions for the workers would result in higher quality care for the recipients).

155. Paul Benjamin, "Conciliation, Arbitration and Enforcement: The CCMA's Achievements and Challenges" (2009) 30 Industrial Law Journal (Juta) 26.

compensation it can award is limited.[156] Studies of the CCMA suggest that there is a high degree of awareness of employment rights among domestic workers in South Africa and significant use of the CCMA, due in part to the CCMA's own outreach measures.[157] Although South African arbitrator and mediator Sarah Christie, in her presentation to the international seminar, offered a sobering caution about the risk of expedited justice in the face of remaining power imbalances particularly when domestic workers are unrepresented,[158] Myrtle Witbooi, general-secretary of the South African Domestic Services and Allied Union, has emphasized the representative role played by the union in preparing and accompanying women at the CCMA and considers that access to dispute resolution through the CCMA promotes domestic workers' empowerment.[159]

The law and practice report also makes the case, based on surveys of the international standards on labour inspection and labour administration, that the role for labour administrations in international labour law is significant and includes supplying technical information and advice, promoting cooperation between inspection services and other governmental services, and securing enforcement of law, notably through inspection visits. It referenced another specific standard, the ILO *Labour Inspection (Agriculture) Convention*, 1969 (No. 129), which provides for labour inspections in the "private home" of the operator with consent or special authorization.

In "L'administration et l'inspection du travail dans le domaine du travail domestique: les expériences de l'Amérique latine," Maria Luz Vega Ruiz builds on her experience as an ILO senior labour relations specialist to survey the legislation

156. *Ibid*. Benjamin illustrates, moreover, that "the efficiencies of the CCMA in resolving disputes through conciliation and arbitration are being undermined by its dependence on other institutions, in particular, the [Labour Court] and the sheriffs, to enforce compliance with its awards. The brunt of these shortcomings is borne by employees" (*ibid.* at 47-8). See also Paul Benjamin, "Friend or Foe? The Impact of Judicial Decisions on the Operation of the CCMA" (2007) 28 Industrial Law Journal (Juta) 1.

157. See Ian Macun, Daniel Lopes and Paul Benjamin, *An Analysis of Commission for Conciliation, Mediation and Arbitration Awards*, University of Cape Town Development Policy Research Unit Working Paper no. 08/134 (2008), Development Policy Research Centre, <http://www.dpru.uct.ac.za/WorkingPapers/PDF_Files/WP_08-134.pdf >.

158. Sarah Christie, "Formal and Substantive Rights of Domestic Workers in South Africa: Effective Enforcement or Quiet ADR?" (Paper presented to the International Seminar, Regulating Decent Work for Domestic Workers, Faculty of Law, McGill University, 29 March 2010). Abstract and transcript available at <http://www.crimt.org/dw2.html>. The *South African Labour Relations Act* excludes representation of parties in most categories of cases, subject to agreement in light of the complexity of the case. See Benjamin, *supra* note 155 at 35. Benjamin adds that fewer than 10 percent of any employees found to have been unfairly dismissed are reinstated (*ibid.* at 38-9).

159. Myrtle Witbooi, "Minority of Women as Domestic Workers" (Presentation to the third United Nations Forum on the Full Participation of Minorities in Economic Life, and Parallel Activities, Geneva, Palais des Nations, 14–15 December 2010) and discussions. Witbooi has been very critical, however, about the slow progress of minimum wage increases (cited with permission). See also Tom Hertz, "The Effect of Minimum Wages on Employment and Earnings of South Africa's Domestic Service Workers," Upjohn Institute Working Papers no. 05-120 (2005), Upjohn Institute, <http://research.upjohn.org/cgi/viewcontent.cgi?article=1137&context=up_workingpaper>.

on labour inspection in a number of Latin American jurisdictions. She also highlights a number of studies produced by the ILO, observes that the CEACR recognizes the importance of home visits in labour inspection subject to safeguards, and reaffirms regulatory proposals highlighted in the law and practice report.[160] Noting the increased importance that some of the contemporary literature on global labour governance has attached to labour inspection, Vega Ruiz nonetheless acknowledges that labour administration services in many parts of the world remain severely under-resourced.[161] Deficits in personnel and resources reduce the likelihood that inspection services will focus on historically marginalized categories of workers such as domestic workers, who work in the household, without a strong policy direction to do so. She draws on the experiences in countries such as Argentina, Brazil, Paraguay, and Uruguay to identify how general statements that labour inspection applies to this sector have been rethought to permit home inspections, subject to procedural limits and time restrictions. These may include a prohibition on inspection visits at night and, in the case of Argentina, a need for the home owner to provide express authorization before the inspector enters the premises. Alternatively, in Uruguay, it entails judicial authorization prior to a visit. In these cases, the constitutionally protected "inviolability" of the home does not translate in a bar on inspections. The household becomes a workplace once a domestic worker is hired. It is subject to inspections but in a manner that safeguards the interests of both the householder and the worker. In concluding, Vega Ruiz is careful to underscore the broader role of labour administration, which includes a collaborative mandate to sensitize constituents to the labour law applicable to domestic workers and, more generally, to promote equality of opportunity and treatment in employment—an approach adopted in Uruguay and highlighted in the law and practice report[162]—to combat discrimination against domestic workers of African descent, who are overrepresented in paid domestic work. Despite the magnitude of the challenge, Vega Ruiz ends her article on a hopeful note as she is persuaded of the importance of ensuring robust involvement of labour administration services in achieving decent work for domestic workers.

Conclusion: Is Regulating Decent Work for Domestic Work Transformative? Future Directions

A considerable amount of organizing, research, and mobilization has been undertaken by constituents nationally, regionally, and internationally in supporting

160. See notably Vega Ruiz's discussion of the pre-inspection visits. Maria Luz Vega Ruiz, "L'Administration et l'inspection du travail dans le domaine du travail domestique: les experiences de l'Amérique latine" [in this volume].

161. See, in particular, Michael J. Piore and Andrew Schrank, "Toward Managed Flexibility: The Revival of Labour Inspection in the Latin World" (2008) 147 International Labour Review 1.

162. ILO, *Decent Work for Domestic Workers, supra* note 1 at 74 (Box VII.1).

the movement for standard setting on decent work for domestic workers. It is clear as well that there is an important distinction between international standard setting—normative baseline rules through a binding convention applicable across jurisdictions and with due regard to development and supplementary regulatory guidance through a non-binding recommendation—and the policy choices and regulatory techniques adopted through national action, legislative and otherwise. The role of international technical cooperation that engages representative, truly tripartite "plus" constituents in rethinking regulation needs to be underscored. These considerations were all raised in the law and practice report. And although the 2010 conference committee resolved to put the item back on the agenda of the ILC in June 2011 for a second discussion of standard setting with a view to adopting a binding convention supplemented by a non-binding recommendation, the outcome of the standard setting is ultimately in the hands of the ILO's constitutionally established constituency.[163] The transnational mobilizing among domestic workers themselves has been impressive and is sure to have long-lasting effects. The prevailing question, which concerns all those committed to substantive equality, is whether international standard setting on decent work for domestic workers is a transformative strategy.

This overriding concern runs through the broad range of contributions to this special issue. It is manifested in one of at least three ways. First is the relationship of the state in the support of social reproduction. Several contributors stress the importance of fairly familiar public policy choices that support alternative approaches to workforce attachment by recognizing that workers (both male and female) have family responsibilities that are important alternatives to the relentless commodification of time within and beyond the household.[164] The reduction of regular working hours for all workers is one approach adopted in some countries. Common policies include subsidized child care services outside of the home, which may change the paradigm—and options for families—and which apply across income levels without presupposing the equality of the gender bargains within the household. However, most would still acknowledge that the resurgence of demand comes not only alongside the impact of structural economic policies on the dislocation of third world women and the constrictions in funding for public

163. The ILO Constitution, *supra* note 143, also provides a multilateral option, should the international standard fail to receive the required support. According to Article 21: (1). If any Convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the delegates present, it shall nevertheless be within the right of any of the Members of the Organization to agree to such Convention among themselves. (2). Any Convention so agreed to shall be communicated by the governments concerned to the Director-General of the International Labour Office and to the Secretary-General of the United Nations for registration in accordance with the provisions of article 102 of the Charter of the United Nations.

164. See also Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling* (Berkeley: University of California Press, 2003); Richard Michael Fischl, "A Woman's World: What If Care Work Were Socialized and Police/Fire Protection Left to Individual Families," in Joanne Conaghan and Kerry Rittich, eds., *Labour Law, Work, and Family* (Oxford: Oxford University Press, 2005) 339.

initiatives but also, in some cases, despite increases in publicly available care as new forms of managerialism in workplace expectations leave increasing numbers of knowledge workers with greater expectations of constant availability.[165]

Second is the challenge of ensuring that domestic workers are able to exercise a collective voice and "citizenship at work" in the governance of their working lives. A core contention in the law and practice report is that "decent" work cannot simply be decreed in the form of paternalistic state legislative protections.[166] As workers with agency, domestic workers are known to engage repeatedly in individual acts of resistance to attempts to set limits on their time and ensure some level of autonomy in the highly personalized work relationship,[167] including quite resolutely rejecting "live in" work and deciding to "live out" whenever possible.[168] However, the ability to organize collectively to negotiate the regulation of the occupation and the quality of the working conditions remains a cardinal part of the domestic work relationship. The space of domestic work shapes both the possibility[169] and the practice of organizing.[170] But domestic workers' isolation

165. See, for example, Kerry Rittich, "Families on the Edge: Governing Home and Work in a Globalized Economy" (2010) 88 North Carolina Law Rev. 1527 (connecting the care economy with broader transformations in the global economy).

166. For a discussion in the South African context, see Ally, *supra* note 17 at 93 (citing domestic workers' "disowning" of the "extension of the state's power through its initiatives to protect them").

167. See, for example, Thornton Dill, *supra* note 15 at 90-1 ("[a]lmost without exception, the women in this study related incidents in which they used confrontation, chicanery, or cajolery to establish limits for themselves within a particular household. In other words, they sought to define very carefully what they would and would not give to their employers in the way of time, commitment, and personal involvement. The basic message which these stories communicate is, that at least on some matters, the employee did not permit the employer to push her around . . . Fighting back as a key to survival in the occupation was a recurrent theme in the women's life histories").

168. *Ibid*. at 140-1; Coble, *supra* note 69 at 56 ("[n]o matter how desperate, domestics continued to reject live-in work. Independence was more important to them"). Ally, *supra* note 17 at 52 (noting that radical transformation of social status was elusive for live out domestic workers, but the shift to live-out work was a way to claim "incredibly important autonomy from employers and the capacity to maintain an independent familial life"). See also Neetha and Palriwala, *supra* note 60 (noting that the "live out" arrangement, often on an unstable, part-time basis, might increasingly be the norm in urban, middle-class households in India, for reasons linked to the size of the employer's home and the unwillingness to assume responsibility for the worker's room and board).

169. Carolyn Steedman speaks evocatively about the space for domestic work, in particular, the kitchen, in the late eighteenth century. She identifies, alongside E.P. Thompson, the "class feeling, articulated in kitchens, wash houses and brew houses, around things, and between women" and emphasizes that "[t]hinking was done in kitchen" and evocatively asks about the nature of the kitchen as a literary and a social space, a place "to which no one and nothing belongs" most notably "servants," but in which ideas are shared or overheard, and where in or beyond gestures like sweeping or processing, things happen. See Steedman, *supra* note 50 at 344-5.

170. Collective agreements were apparently customary in a few German towns in the 1930s in Germany, where trade unions formerly had sections for women domestic workers and at the time had a main Federation of Home Workers and Women Domestic Servants. See Magnus, Part I, *supra* note 20 at 202; Magnus, Part II, *supra* note 20 at 360.

and limited control over their limited free time have proven to be barriers over time to many short-lived organizing initiatives. The law and practice report, and virtually every contribution to this special issue, have chronicled the organizing efforts of domestic workers over time, who "act collectively wherever possible to bring about structural change and combat exploitative working conditions and discrimination."[171] Not only has the inability to exercise collective agency by operationalizing freedom of association and collective bargaining rights been seen as a key reason explaining the persisting inequality faced by domestic workers, but collective bargaining—through traditional and alternative worker organizing measures—has also been raised as an important part of a strategy of empowerment and change in the provision of the work.

Legislative strategies to promote the freedom of association and collective bargaining of domestic workers have been remarkably weak, however. Simple inclusion in some labour codes (often through a quick "delete" of former and perhaps more honest legislative exclusions) hold symbolic value but may be practically meaningless when the structures need to take on a specific form.[172] While, for some, sub-categories of care workers, judicial extensions,[173] and organizing and lobbying initiatives identifying the state as the employer,[174] can yield unionization gains, more generalized gains ultimately require more specific solutions.[175]

The third concern for those committed to transformation is more elusive still and involves all that surrounds the engagement of those who seek equality both beyond and within their "private" lives and who struggle with whether, when all is said and done, the persisting messiness of the intimacy that overlays care with coercion, privilege with paternalism/maternalism, and solidarity with self-interest can give birth to an equitable social reordering. Beneath much of the angst and soul-searching in feminist writing about an "othered" woman paid an invariably structurally lower wage than the more societally privileged woman to undertake the care work in the home lie crucial questions about whether paid domestic work with its historically laden subordinate status can be decent work at all. The "decent work" paradigm in domestic work is discomforting, and it is no wonder that scholars and activists continue to grapple with what

171. ILO, *Decent Work for Domestic Workers, supra* note 1 at 77.

172. In collective bargaining, this is particularly the case in jurisdictions that emphasize enterprise level bargaining and that do not have self-constituted groups of employers' organizations.

173. *Confédération des syndicats nationaux v. Québec (Procureur general)*, [2008] J.Q. No. 10735, 2008 QCCS 5076 (Que. Sup. Ct.) (entailing a strategy to include a comparable but distinct category of workers who care for children or the elderly in their own homes within the scope of the Quebec Labour Code). See discussion in Adelle Blackett, "Mutual Promise: International Labour Law and B.C. Health Services" (2009) 48 Supreme Court Law Review (2d Series) 365 at 398–406.

174. See Delp and Quan, *supra* note 6 (discussing the unionization of subsidized elder care workers in the United States).

175. One such example is in France, in the negotiation and enforcement of the national collective agreements, which are legislatively extended (see note 38 and accompanying text). The model is dynamic and raises important questions about representation. It is the subject of my ongoing research.

Thornton Dill found in her interviews with black women domestic workers in the United States who had migrated from the US South to the North between 1922 and 1955 and who had spent much of their lives as domestic workers: "Contrary to popular imagery, the overriding attitude expressed toward the occupation was not disdain or loathing, but ambivalence."[176] Encarnación Gutiérrez-Rodríguez also pauses on her "sensing" of domestic work, arguing compellingly that

> [i]n the daily life of household work, affects are transmitted and circulated through the energies incorporated, expressed and impressed in a space marked by local and global inequalities. Though affects seem to transcend a material logic of power, they evolve implicitly in this logic. Affects are also ambivalent … In the encounter between domestic worker and their employers, more than an exchange of reproductive tasks or emotional labor occurs … affects evolve in the extension to other bodies.[177]

Guttiérez-Rodriguez insists upon a story of domestic work (and by extension, I would argue, the regulation of domestic work) that takes into account the power dynamics that are written on "concrete, historicized bodies" living the effects of racialization and feminization intimately intertwined with active devaluation and attempts at dehumanization.[178] Pierrette Hondagneu-Sotelo's work draws us closer to what legal analyses, if they exclude pluralist norms, may tend to miss, in "the realm of indignities."[179] It is therefore not surprising that the literature—across place and time—diverges as to whether domestic workers interviewed seek more egalitarian intimacy or seek equity in a more standard employment relationship.[180] Where it converges, however, is on the need for any transformative regulatory recipe of "rights" and "remedies" to originate not abstractly from elsewhere, not even the ILO, but from within, to buttress rather than supplant the workers' own capability to construct an egalitarian law of the home workplace. These are the lessons of critical, post-colonial approaches of law, which, as I argue elsewhere,

> will deeply challenge the ability of any notion, inherently, to achieve in the abstract a result independent of notions of racial status and other structural

176. Thornton Dill, *supra* note 15 at 83.
177. See Gutiérrez-Rodríguez, *supra* note 127 at 6.
178. *Ibid*. at 7.
179. See discussion at note 79 and accompanying text.
180. See Ally, *supra* note 17 at 113 (contrasting the findings from her interviews of South African domestic workers with those conducted by Hondagneu-Sotelo in the United States with Latina immigrant workers). See also Faye E. Dudden, "Experts and Servants: The National Council on Household Employment and the Decline of Domestic Service in the Twentieth Century" (1986) 20 Journal of Social History 269 (capturing the limits of the proposed reforms reflective of the fact that the "experts" shared the middle class values and racism that prevented them from identifying the broader social transformation underway).

> factors. Yet, critical race theory insists on the need to reconstruct rights once their fundamental contradictions have been isolated, precisely out of a concern for fostering societal inclusion. The notion of "decent work," therefore, despite a need for some caution, is argued to hold the potential to provide an important corrective to abstract articulations (and applications) of rights.[181]

This is not meant as a full answer. It is a starting point, which must take its cues from those most marginalized workers whom it seeks to centre, as to whether the work that should be the most humanizing can in an era of global restructuring become part of "labour law's" more fundamental rethinking and, if so, ultimately the most transformative.

Annex

Box I.1
A note on terminology

The use of the terms "domestic work" and "domestic workers" should be explained, as the language surrounding this occupation has varied greatly over time and according to geographical and cultural context. Their meaning can therefore vary from one country to another.

The language used in this report has the virtue of updating the archaic terms of "maid" and "servant" that clearly implied direct subservience. The shift to "worker" is particularly significant for the ILO, which is responsible for improving the conditions of *all* workers.

Some parts of the world have already moved away from the language of "domesticity," because of its pejorative connotations and the tendency to undervalue care work. Others, on the other hand, have opted to retain the concept of "domestic" work and note that the word has its place in the language of international relations, side by side with that of the individual state. Others again prefer to speak of "*private* household," but this risks institutionalizing a distinction between public and private regulation that has already been superseded by the ILO's Home Work Convention, 1996 (No. 177).

Box continued

181. Adelle Blackett, "Situated Reflections on International Labour Law, Capabilities, and Decent Work: The Case of Centre Maraîcher Eugène Guinois" (2007) hors série, Revue québécoise de droit international 223 at 242.

Box I.1 continued

The decision of some countries to espouse the concept of "home care" has some real advantages, but it also comes with problems. Although theoretically the language is gender neutral, perhaps for that very reason it does not readily conjure up the image of a gardener or chauffeur. It may be something of a euphemism, too, masking the broad range of menial household duties that domestic workers are called upon to undertake, while tasks of a more uplifting nature are reserved for members of the family, generally the mother. However, the real virtue of this language is the inherent principle that caring *is* a form of work. Indeed, some academics speak of "caretaking" rather than "caregiving," to emphasize the skills associated with care work and the importance of their remuneration.

In other countries again, the terms used are "household helper" or "household aide," a formulation that unfortunately takes the emphasis away from the notion of "worker" and runs the risk of "de-skilling" the occupation. A number of civil associations have therefore preferred "household work" as a linguistic solution. But here there is a real danger of confusion with the term "home work" employed in past standard-setting exercises—a confusion that is aggravated by the problem of translation into other languages. Be that as it may, the language chosen for the future instrument must reflect the wide range of responsibilities and skills required in domestic work.

This report by the Office abides by the Governing Body's decision to refer to decent work for "domestic workers," in keeping with the usage of the ILO's supervisory bodies and other ILO reports. As far as possible, the report has also updated references in past ILO documents to "servants" and "maids."

That said, it must be made clear that the International Labour Conference is at liberty to adopt a Convention with a different title and that ILO Members, in consultation with their representative employers' and workers' organizations, might retain the authority to use the terminology most suited to their local context. Self-definition, particularly by those doing the work, is crucial. The important thing is that the workers who come within the scope of the proposed international instrument should benefit effectively from the protection it affords.

Source: ILO, *Decent Work for Domestic Workers*, Report no. IV(1) at the International Labour Conference, 99th Session, 2010, Fourth Item on the Agenda (Geneva: ILO, 2010).

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